

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





74-1138

*Original*

*B  
Pg 5*

In The  
**United States Court of Appeals**  
For The Second Circuit

UNITED STATES OF AMERICA,

*Appellee,*

vs.

THOMAS JOSEPH CARROLL, VINCENT McCLOSKEY and  
WILLIAM McCLOSKEY,

*Appellants.*

**APPELLANTS' APPENDIX**

Volume 11, pp. 301a - 600a

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a fair trial.

17: The Court erred in not severan the defendant Thomas Carroll, from Vincent McCloskey as there was a question of his ~~##~~ sanity, and as to his plea, the defendant was seriously handicaped by Mr McCloskey's stultification in his defence and at trial.

18: The Court erred when it denied motions for a mistrial made during the trial and when it permitted certain testimoney and exhibits to go into evidence over objections at the time of trial.

19: The Court erred in denying all previous motions made prior to and during the trial.

20: The defendant was prejudiced when with the jury present, the witness Mr Kiewet a postal inspector, who was incharge of the case, who was allowed to sit through the entire proceedings, and assist the United States Attorney testified.

21 :The Court was in error, and should have dismissed the case when Mr Kiewet ,left the Court room and accompanied Mr Turner ~~##~~ to the witness room, and ingadged in convisaytion with him, while side bar was being held, and Mr Turner was in the middle of his testimoney and allowing him to finish testifying, after being coached.

22 : There was insifficient evidence to hold for the verdict by the jury against the defendant Thomas Carroll, as to Counts 1,2, and 3 of the indictment.

23: As a matter of law there was reasonable doubt as to the defendant's guilt.

SI A JURE DISCEDAS VAGUS ERIS, ET ER UNT OMNIA OMNIBUS INCERTA.

24: The admitting into evidence of acts against the other defendants on trial which would constitute crimes, was highly prejudicial to the defendant, Thomas Carroll, and all of the evidence pertaining to the other defendants which were brought inon the conspiracy theory by the Court, was unduly prejudiced against the defendant, Thomas Carroll. For instance, a holdup and a car theft was testified to against the defendant Vincent McCloskey and actions and statements on the part of defendants Rippy, and Vincent McCloskey were admitted into evidence all to the prejudice of the defendant; Thomas Carroll.

25: The Court erred in failing to instruct the jury that if they totally disregarded the testimoney of the witness, Myers, that they would have to acquit the defendant on Counts



2 and 3 of the indictment.

26: The procedure utilized by the United States Attorney and permitted by the Court of having a Court room identification, by forcing the defendant to stand up and identify himself, to co-defendants, that the Government intended to use as witnesses against him who did not know him, under the guise of a Superceding Indictment, that served no purpose other than to place the name of John Turner in place of John Doe, when Turner who worked as a paid informer was known to them all along, and then removing the defendant Carroll from the Court, and not allowing him to hear, or participate in the proceedings, just before his trial was to start on September 17, 1973. was highly prejudicial to the defendant and the Court erred in not ~~####~~ granting severance to the defendant Thomas Carroll.

27: The defendant asked the Court for financial aid, and to secure an investigator to properly prepare his defence, was denied, and put the defendant at a disadvantage thereby keeping him from finding facts, witnesses, and ~~####~~ other things pertinent to the defence for whatever reason, the Court seemed preoccupied with the speeding up of the trial process and this preoccupation interfered with the defendants right to a fair trial and deprived him of due process of law.

28: The record, indicates that the trial itself was conducted without due process of law and violated the defendants constitutional rights to a fair trial.

29: The Governments witness John Turner committed perjury on several occasions, with the Courts blessings, He claimed that his wife did not work in a hospital, and was not a nurse when in fact she is a nurse in a Bayonne New Jersey Hospital, He further stated that he had meet with me on four occasions, all at 11:30 AM When in fact I was in Court, In front of a judge at all four times. When defence counsel for Mr Carroll tried to bring it out the Court interfered, and stoped him, telling him to go on to the next question.

30: The Governments witness Chester Crawford, stated that when he first learned about this crime, " A I met them down there. I was looking for my car, I was on trial in here, and they said my car would be along shortly, because I had lent Carlton Boyd my car during the day, and I learned he was down there, and i went down there looking for him and I found him, and he told me that Carroll would bring my car along shortly." a impossablity because I

was on bail and in Court, January, February, and March, 1973, for stealing Mr Crawford's Car which was impounded by the New York Police Dept. in the early part of January, 1973, I was acquitted when Mrs Crawford testified that her husband had loaned me the car of the car charge, and completely acquitted of all charges on March 27, 1973. Because the Government refused me bail, and I had no money to get the transcripts from the Court, and no investigator to get the necessary statements from judges, etc, all the lies from the Government witnesses as to meetings in the alleged conspiracy, and overt acts crept into the trial. Causing a grave miscarriage of justice.

31: That the Government denied me the use of my witnesses that were available, thus denied me a fair trial.

32: That the Government intimidated and threatened my witness, and used trickery to prevent me from use of the witness.

33: That the Court was pro Government, and made it known to the jury by the following acts

a/ The Court evidenced displeasure with counsel for the defendants during the course of the trial.

b/ This was ~~done~~ done by facial expressions, gestures and comments showing impatience sarcasm and voice intonation and other movements of the body making it known to all in the Court Room that he wanted a conviction.


c/ One picture is worth a thousand words, the Court reading the charge to the jury pleaded, and directed them to find the defendants guilty each time it was read, ~~done~~ by emphasizing, and facial expressions. Indeed the trial judge was the chief prosecutor. which undoubtedly affected the jury's feelings towards the defendants and their counsel.

WHEREFORE, the defendant, THOMAS JOSEPH CARROLL, prays for an order:

- 1 : To have the verdict of the jury set aside ;
- 2 : For a new trial for the defendant in the interest of justice ;
- 3 : To enter a Judgment of acquittal for the defendant ;
- 4 : To dismiss the indictment herein ;
- 5 : And for such other and further relief as to the Court may seem just and proper.

  
THOMAS J. CARROLL

Sworn to before me this 24th  
day of January, 1974.

  
Federal Detention Headquarters, N.Y.

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2      UNITED STATES DISTRICT COURT  
3      SOUTHERN DISTRICT OF NEW YORK4      -----x  
5      UNITED STATES OF AMERICA,      :

6                      vs.      :

73 Crim. 855

7      JOHN TURNER a/k/a JACK,      :

8                      Defendant.      :

9      -----x

10  
11                      September 21, 1973  
12                      New York, New York  
13                      2:00 P.M.

14      Before:

15                      HON. CHARLES M. METZNER,

16                      District Judge.

## 17                      APPEARANCES:

18      PAUL J. CURRAN, ESQ.

19                      United States Attorney for the  
20                      Southern District of New York

21      JOHN J. KENNEY, ESQ.,

22                      Assistant United States Attorney.

23      JACK KAPLAN, ESQ.,

24                      Attorney for Defendant.

25                      o0o

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2                 THE CLERK:    United States of America versus  
3 John Turner also known as Jack.   Government ready?

4                 MR. KENNEY:   Government ready.

5                 MR. KAPLAN:   The defendant is ready.

6                 MR. KENNEY:   Your Honor, I believe Mr. Kaplan,  
7 on behalf of the defendant, ~~has an~~ application to make, but  
8 before he does that I would like to make two points clear  
9 to the Court.

10                The government as of this time is willing to con-  
11 sent to a plea by Mr. Turner to the conspiracy count of  
12 the indictment and to that portion of count 3 of the in-  
13 dictment which would carry a ten year maximum sentence.  
14 That would exclude the last sentence in the indictment  
15 reading, "And in effecting and attempting to effect such  
16 robbery did wound and put in jeopardy the life of said  
17 Crawford Lawrence by use of a dangerous weapon, to wit, a  
18 32 caliber revolver."

19                That additional element would require a twenty-  
20 five year mandatory sentence to be imposed.

21                We would like to add that the government makes  
22 no promises of any kind to Mr. Turner and wishes to make  
23 clear to him that we consent to this plea with the under-  
24 standing that we will take that position at the time of  
25 sentence which we deem to be appropriate.



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2             In addition, the consent to this plea is in-  
3     tended, after discussion with Mr. Kaplan, to limit the  
4     maximum penalty which could be imposed on Mr. Turner with  
5     the government's consent and if the Court accepts the  
6     plea with the Court's permission as well, but it is not  
7     intended to bar the Court in any way from considering  
8     underlying facts of this offense which may also have been --

9             THE COURT:    I don't follow that last statement.

10            MR. KENNEY:   Well, your Honor, if Mr. Turner  
11     pleads guilty to only a portion of the indictment, he  
12     can only be sentenced to a maximum of fifteen years in  
13     jail and that is the reason why it is our understanding  
14     he is willing to plead to that portion and in return we  
15     will at the time of the sentence dismiss the open counts  
16     in the indictment.

17            We do not, however, wish to give the Court or  
18     the defendant the impression that we do not want the Court  
19     to consider or that the Court is barred from considering  
20     underlying facts of this offense which may have been the  
21     basis for the charge, for example, in count two in the  
22     indictment, which will be dismissed. This issue has  
23     been raised by other judges in the court just recently  
24     so we want to make it clear at the time of plea that the  
25     probation office will submit a complete report.

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2                 THE COURT:    I don't follow that.  You are  
3     saying to me that while you have no objection to the  
4     defendant's pleading guilty to count one and a portion  
5     of count three, you wanted me to consider your represen-  
6     tations as to this defendant's involvement in count two  
7     in determining what sentence I shall impose on his plea.

8                 Is that what you are telling me?

9                 MR. KENNEY:   That's correct, your Honor.

10                THE COURT:    I don't see how I can do that, be-  
11     cause that means I am to accept your ex parte statement  
12     as to the defendant's involvement in count two and he  
13     is pleading not guilty and standing on that plea of not  
14     guilty.

15                MR. KENNEY:   Well, your Honor, we believe that --

16                THE COURT:    This is no different than having  
17     assistants get up and plead with me that I should sock  
18     the defendant an extra five years because he took the  
19     stand and lied and he is guilty of perjury.  My stock  
20     answer is if he is guilty of perjury, go down and indict  
21     him for perjury and if he is found guilty after having  
22     been afforded the protections granted him by the Con-  
23     stitution of the United States, then we will deal with  
24     the punishment for the perjury.  Don't tell me that be-  
25     cause he took the stand and told a story which the jury

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2       didn't believe because a jury subsequently convicted him  
3       that I am supposed to add a couple of more years on be-  
4       cause he committed perjury.

5               MR. KENNEY: Your Honor, the underlying facts  
6       in count one, as the Court will see, both from the trial  
7       of this case and from the probation officer's reports  
8       with regard to people who pleaded guilty and from Mr.  
9       Turner's probation report will indicate that as a result  
10      of this conspiracy and as a result of the assault for  
11      which he is willing to plead guilty a man was killed and  
12      a postal truck was nearly robbed so that he is admitting  
13      facts.

14             We are simply asking the Court to take into  
15      consideration all of the facts which would be in the  
16      probation report around those counts.

17             THE COURT: He is not pleading guilty any  
18      more than one of the other defendants pleaded guilty  
19      to the conspiracy count that he knew anything about the  
20      use of a gun or was involved with the use of a gun. He  
21      is specifically negating those facts. Isn't that true,  
22      Mr. Kaplan?

23             MR. KENNEY: We would ask permission to re-  
24      consider our position then with the Court's permission to  
25      see whether we will consent on that basis.



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2             THE COURT:    I don't see what difference it  
3     makes to you.  You are saying you are willing to accept  
4     a plea which carries a maximum sentence of fifteen years.

5             MR. KENNEY:   That's correct, your Honor, but  
6     we are not willing to reduce the crime that was committed.  
7     We are only willing to accept a plea which will reduce  
8     the maximum sentence and if the Court feels that it can-  
9     not take into consideration facts which would --

10            THE COURT:    Do you want me to take into con-  
11   sideration the fact that somebody was killed in this  
12   crime?

13            MR. KENNEY:   Yes, your Honor, I certainly do.

14            THE COURT:    Even though you are willing to  
15   accept a plea that doesn't embrace those facts?

16            MR. KENNEY:   That's correct.

17            THE COURT:    How can I do that?

18            MR. KENNEY:   We believe that you can, your  
19   Honor, and we would be willing to submit authorities on  
20   that point.

21            THE COURT:    It is not a question of authority.  
22   It is a question of what a judge should do.

23            MR. KENNEY:   When I say authority, your Honor,  
24   I mean there is some case law which indicates that the  
25   Court can consider   when imposing sentence all of the

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2       facts submitted in the probation report, whether or not --

3               THE COURT:   Where is the probation officer  
4       going to get them except from you?  He is going to put  
5       in the report what you tell him.

6               MR. KENNEY:   He also, I would hope, your Honor,  
7       interviews other people.  In this case he can interview  
8       one of the victims of the crime who is still alive, Crawford  
9       Lawrence, as well as other defendants and postal inspectors  
10      and other people who investigated this.

11              THE COURT:   What I am trying to say is I know  
12      that there was a robbery attempted in which a postal  
13      employee was killed and I know because of other pleas  
14      that there was a conspiracy to rob a truck, but in certain  
15      instances, to wit, Rippy  and now this defendant you are  
16      saying, we will take a plea from you allowing you to say  
17      that you weren't involved in the murder or knew that a  
18      weapon was used and while you say that to the defendant,  
19      you now tell me, however, your Honor, we want you to rem-  
20      ember that the gun was used here.

21              MR. KENNEY:   That's correct, your Honor.  If  
22      that is not acceptable to the defendant and/or the Court,  
23      we would ask permission --

24              THE COURT:   I am just telling you that I am  
25      not sure I am going to worry about that in sentencing

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2     the defendant. What you are saying is you want to get up  
3     at the time of sentence and tell me one of the reasons I  
4     should impose the maximum sentence is because a person  
5     was killed here, but you are consenting to a plea which  
6     excludes this man's involvement in the murder.

7             Now, I don't see how you can do that.

8             MR. KENNEY: We think that we can.

9             THE COURT: How can you logically?

10            MR. KENNEY: Because the defendant is getting  
11     the benefit of limiting the maximum sentence and he is  
12     giving his plea --

13            THE COURT: And you are agreeing to it.

14            MR. KENNEY: That's right, but he is giving  
15     his plea listening to me make this statement and knowing  
16     that we are going to ask the Court to consider all of the  
17     underlying facts.

18            THE COURT: You are going to tell the Court  
19     that you want the Court to impose the maximum sentence.  
20     He knows that.

21            MR. KENNEY: We don't take that position, your  
22     Honor, and I am not certain that we would take that position  
23     at the time of sentence, but we keep this option open.  
24     We don't say that -- in fact, we don't say at all that  
25     we are going to recommend a sentence to the Court or make

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a statement that we think a harsh sentence should be imposed, but we are asking the Court now to accept the plea, we are consenting to the making of a plea by the defendant only with the understanding that the Court will take into consideration all of the underlying facts of the offense and that the purpose of limiting the scope of the plea is to limit the maximum sentence, not the responsibility at the time of sentence.

THE COURT: How could I take the underlying facts when you have consented to let the defendant plead to counts or facts which don't admit his involvement in the underlying facts?

MR. KENNEY: I think, your Honor, that this is done quite frequently at sentences where a defendant pleads guilty to possession of one stolen envelope and then the Court finds in the probation report that the man has been in jail five times.

THE COURT: That is his prior record, entirely different from this. He hasn't been convicted in this case of the use of the gun or being involved in the murder.

MR. KENNEY: There are frequently things in a probation report that the Court will take into consideration that have not resulted in convictions.

THE COURT: I don't include them in my evaluation



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2     and I tell the probation officer, don't put anything in  
3     the report that the United States attorney tells you that  
4     is not in the record of the case.

5             I am on the record with a letter to the probation  
6     officer that I do not wish handed up to me what an assistant  
7     tells a probation officer concerning facts which have not  
8     been proven. That is contrary to the defendant's rights  
9     under the Constitution, Mr. Kenney. He has not been found  
10    guilty beyond a reasonable doubt.

11            MR. KENNEY: We would ask permission, your  
12    Honor, to reconsider our position and to report to the  
13    Court whether we will consent to a plea of less than the  
14    entire indictment.

15            MR. KAPLAN: If your Honor and if Mr. Kenney  
16    will permit, the defendant, Mr. Turner, desires to join  
17    the assistant United States attorney in attempting to  
18    persuade your Honor of the propriety and legality of what  
19    is being suggested that your Honor do here.

20            The defendant regards the opportunity to plead  
21    to the first portion of count three, the portion that  
22    defines an offense whose theoretical maximum punishment  
23    is ten years and the opportunity to plead to the conspir-  
24    acy count with a theoretical maximum punishment of five  
25    years as a substantial boon and obviously to be preferred

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2       than the constitutional right on counts two and three as  
3       written, which carry mandatory minimum sentences of life  
4       imprisonment and twenty-five years respectively.

5               The defendant is willing to concede the suggest-  
6       ion made by the assistant United States attorney for pur-  
7       poses of establishing that the facts that your Honor  
8       chooses to take into consideration at the time of imposition  
9       of sentence are facts and are not merely unsubstantiated,  
10      unsworn hearsay in the presentence report.

11              I think perhaps I could make a statement that  
12      would clarify the issues.

13              In count one the defendant desires to plead  
14      guilty to conspiring with others to commit a robbery of  
15      a mail truck.

16              THE COURT: That is what I call paragraph 2 (a)  
17      of the indictment, right, but he will not plead to 2(b)  
18      of the indictment. I went through this with one of the  
19      other defendants.

20              MR. KAPLAN: I think that Mr. Turner's position  
21      is different from that other defendant's position, if  
22      your Honor please. If you will bear with me --

23              THE COURT: Take a look at the indictment and  
24      this is important on the allocution.

25              MR. KAPLAN: 2 (a) refers to it being a part



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2     of the conspiracy to steal mail matter.

3             THE COURT:    2 (b) is part of the conspiracy to  
4     use dangerous weapons.

5             MR. KAPLAN:   The defendant is willing to admit  
6     the facts alleged in 2 (b) that it was a part of the con-  
7     spiracy that a dangerous weapon would be used to effect  
8     the conspiracy and, furthermore, the defendant is willing  
9     to admit that in the course of attempts to carry out the  
10    conspiracy one of those weapons was used and a Post Office  
11    employee was killed.

12            THE COURT:    But he is not willing to admit that  
13    he was guilty of the substantive offense in attempting to  
14    effect the robbery he wounded and put in jeopardy the  
15    life of Crawford Lawrence.

16            MR. KAPLAN:   That's correct, if your Honor  
17    please.

18            THE COURT:    All right, based on your statement,  
19    Mr. Kaplan, I will proceed.

20            MR. KAPLAN:   Thank you, your Honor.

21            Mr. Turner, will you stand.

22            Perhaps before I make my formal application to  
23    withdraw a portion of the plea previously entered and  
24    to plead guilty to a portion of the indictment, it would  
25    be appropriate for me to state on the record that I have

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2       had many, many hours over many days of intense consulta-  
3       tions and conversations with Mr. Turner respecting his  
4       recollection of what happened in this case and with the  
5       assistant United States attorney and others in the United  
6       States attorney's office.

7               At one time I was under the impression that the  
8       facts were such that Mr. Turner was innocent of the crimes  
9       charged and at that time I advised Mr. Turner that based  
10      on that understanding he stood a reasonably good chance  
11      of being acquitted if he went to trial, although he would  
12      run the risk of being convicted of an offense carrying  
13      a very severe mandatory minimum sentence.

14             It is now my belief that my original impression  
15      of what the facts were was false and that, in fact, the  
16      plea which Mr. Turner wishes to enter will truthfully  
17      admit guilt of those offenses and the additional facts  
18      that I have just made a formal statement respecting.

19             Under those circumstances, I have advised Mr.  
20      Turner that in limiting the maximum exposure which he is  
21      risking in terms of theoretical maximum sentence, he is  
22      doing something that he may well decide and has decided  
23      is something that he wants to do notwithstanding the fact  
24      that it is his right to put the government to its proof  
25      and he cannot be sentenced at all unless twelve men and

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2       women on the jury are persuaded beyond a reasonable doubt  
3       that he has committed the crimes precisely as charged  
4       based on the proof at trial.

5               Now, if your Honor pleases, Mr. Turner respect-  
6       fully wishes to withdraw the plea of not guilty previously  
7       entered to counts one and three of the indictment and to  
8       plead guilty to count one and guilty to that portion of  
9       count three which charges assault and robbery of mail  
10      matter, but not the portion of the count which refers to  
11      the use of a dangerous weapon or the creating of a danger  
12      of bodily injury.

13      BY THE COURT:

14             Q       Mr. Turner, I understand that you wish to change  
15      your plea from not guilty to guilty to count one of the  
16      indictment 73 Criminal 855 and the first portion of count  
17      three of that indictment charging assault on a person in  
18      connection with the robbery of the mail; is that correct?

19             A       That's correct, your Honor.

20             Q       Is Mr. Jack Kaplan, the gentleman standing to  
21      your right, your attorney?

22             A       Yes, he is, your Honor.

23             Q       Have you discussed the charges contained in  
24      this indictment with Mr. Kaplan?

25             A       Yes, I have, your Honor.

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2           Q     Do you understand every accusation made against  
3     you by the counts in this indictment?

4           A     Yes, I do.

5           Q     Have you told Mr. Kaplan all the facts and  
6     surrounding circumstances known to you concerning these  
7     accusations?

8           A     I have, your Honor.

9           Q     Do you feel that Mr. Kaplan is fully informed  
10    as to such matters?

11          A     Yes, I do.

12          Q     Has Mr. Kaplan discussed with you any possible  
13    defenses that you might have to the charges contained in  
14    this indictment?

15          A     Yes, your Honor.

16          Q     Are you satisfied with the services of Mr. Kaplan?

17          A     Yes, I am.

18          Q     Now, count one of this indictment charges that  
19    after January 1st, 1973, up to and including the date of  
20    filing of this indictment, you conspired with Messrs. Carey,  
21    Vincent McCloskey, Robert Rippy, **Baul Crawford,**

22                Terrence Myers and Geoffrey Mann to steal and take  
23    mail bags from a mail truck that was in violation of  
24    Section 1708, Title 18, United States Code.

25                Did you conspire with the named gentlemen to



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2     steal mail from a mail truck?

3           A     Yes, I did, your Honor.

4           Q     Was that stealing to take place on April 5, 1973?

5           A     Yes, your Honor.

6           Q     Was it your purpose to take the contents of the  
7     truck out of the truck and use them for your own use?

8           A     Yes, your Honor.

9           Q     How old are you?

10          A     Thirty-one, your Honor.

11          Q     Let me ask you in conjunction with that first  
12     count of the indictment, whether you met with Thomas Carroll,  
13     Vincent McCloskey, Chester Crawford, Terrence Myers and  
14     Geoffrey Mann at Katz' Delicatessen on Houston Street,  
15     New York on April 5, 1973?

16          A     Yes, I did, your Honor.

17          Q     Did you, on April 5, 1973, assault Crawford  
18     Lawrence, a person having custody of mail?

19          A     Yes, your Honor, I did.

20          Q     Did you do that intending to rob and steal that  
21     mail from the United States?

22          A     Yes, I did, your Honor.

23          Q     Do you understand that the maximum punishment  
24     which the law provides under count one is five years im-  
25     prisonment and \$10,000 fine and the maximum punishment

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2       under count three is ten years imprisonment?

3           A     Yes, your Honor, I do.

4           Q     Do you understand that the Court may impose a  
5       sentence which would direct that the sentences imposed  
6       be run consecutively and not concurrently?

7           A     Yes, your Honor, I understand that.

8           Q     Do you understand that by changing your plea  
9       to guilty the Court may impose the same punishment as  
10      though you had stood trial and been convicted by a jury?

11          A     Yes, your Honor, I understand that.

12          Q     Do you understand that by pleading guilty you  
13      are waiving your right to a trial by jury of the charges  
14      in this indictment?

15          A     Yes, your Honor.

16          Q     You are waiving your right to have such a trial  
17      and to be confronted by witnesses produced by the govern-  
18      ment to testify against you?

19          A     Yes, your Honor.

20          Q     You are waiving your right to cross-examine  
21      those witnesses?

22          A     Yes, your Honor.

23          Q     You also, do you understand, are waiving your  
24      right to compel the attendance of witnesses to testify  
25      in your behalf?



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2           A     Yes, your Honor, I understand that.

3           Q     Has anyone attempted to influence you or to  
4     promise you anything to induce you to change your plea  
5     of not guilty to guilty?

6           A     No, your Honor.

7           Q     Have you given any statement to any law enforce-  
8     ment officer or assistant United States attorney concerning  
9     the offenses charged in this indictment?

10          A     Yes, I have, your Honor.

11          Q     Is your plea of guilty being made because you  
12     made such a statement?

13          A     No, your Honor.

14          Q     Is this application by you to change your plea  
15     from not guilty to guilty being made voluntarily and of  
16     your own free will because you are guilty and for no other  
17     reason?

18          A     Yes, your Honor.

19          Q     Do you use narcotics or marijuana?

20          A     No, your Honor.

21                THE COURT: Mr. Kaplan, do you know of any reason  
22     why Mr. Turner should not plead guilty to this indictment  
23     as he has?

24                MR. KAPLAN: No, your Honor, I do not. As I  
25     have stated, based on the various conversations I have

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had with the gentlemen mentioned, I am satisfied that Mr. Turner is guilty of the crimes to which he is pleading, that the facts that he is admitting over and above those crimes are true facts and that he does not have a defense that has a chance of prevailing at trial.

THE COURT: I will accept the plea. The date of sentence will be fixed later on after we have worked out the disposition of the other defendants in this case.

MR. KAPLAN: May the defendant be allowed to telephone his wife in New Jersey?

THE COURT: Yes. What is the bail situation here, Mr. Kenney?

MR. KENNEY: The bail is \$200,000, your Honor.

We ask that be continued.

THE COURT: All right. You may telephone your wife in New Jersey.

THE DEFENDANT: Thank you, your Honor.

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I (We) hereby certify that the foregoing is a true and accurate transcript, to the best of my (our) skill and ability, from my (our) stenographic notes of this proceeding.

Official Court Reporter  
U. S. District Court

**Official Court Reporter**  
**U. S. District Court**

mnd

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA

-v-

73 Cr. 855

THOMAS J. CARROLL, JOHN TURNER, a/k/a  
"Jack," VINCENT McCLOSKEY, a/k/a "Mike,"  
ROBERT E. RIPPY, a/k/a "Ripp,"  
CHESTER CRAWFORD, PAUL CRAWFORD,  
TERRENCE DEWEY MYERS and  
GEOFFREY MATTHEWS MANN,

Defendants

-and-

UNITED STATES OF AMERICA

-v-

73 Cr. 972

WILLIAM McCLOSKEY, a/k/a "Billy,"  
and HARRY JOHNSON,

Defendants.

-----X

Before:

Hon. Charles M. Metzner,

District Judge  
And a Jury.

New York, N. Y.  
December 10, 1973 - 11:40 a.m.

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## APPEARANCES:

PAUL J. CURRAN, Esq.  
United States Attorney  
for the Southern District  
By: JOHN J. KENNEY, Esq.  
MICHAEL Q. CAREY, Esq.,  
Assistant United States Attorneys

MICHAEL P. DIRENZO, Esq.  
Attorney for Defendant Thomas J. Carroll

JOHN F. MARTIN, Esq.  
Attorney for Defendant Vincent McCloskey

RICHARD P. HAFETZ, Esq.,  
Attorney for Defendant Robert E. Rippy

DONALD A. HOPPER, Esq.  
Attorney for Defendant William McCloskey

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(Jury impanelling was begun at 11:40 a.m.; a  
luncheon recess was taken at 1:30 p.m.; impanelling of the  
jury was resumed at 2:10 p.m.)

(A jury was duly impanelled and sworn.)

(Four alternate jurors were duly impanelled and  
sworn.)

THE COURT: Mr. Schulman, ladies and gentlemen  
of the jury, from this moment on you are not to discuss the  
case and the evidence that you will hear with anyone else,  
not even with each other, until the case has been submitted  
to you for determination.

Of course, it is obvious why you should not dis-

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2 cuss the case with anyone; the reason why you are not to dis-  
3 cuss it amongst yourselves is that in such conversations you  
4 may reach conclusions in your own mind or influence your  
5 fellow jurors before all of the evidence is in. It is the  
6 function of the jury under our system of government to keep  
7 its mind open until the case is finally submitted to you for  
8 determination.

9 Mr. Fresno, our clerk, will show you the jury  
10 room in the rear of the courtroom. You will leave your  
11 hats and coats there. We will have a short recess, then  
12 have the openings to the jury.

13 (Jury excused.)

14 THE COURT: How much time do you want for your  
15 opening, Mr. Kenney?

16 MR. KENNEY: 15 minutes would be adequate.

17 THE COURT: Mr. Direnzo?

18 MR. DIRENZO: I will be as brief as the  
19 prosecutor?

20 THE COURT: Mr. Martin?

21 MR. MARTIN: About 10 minutes.

22 MR. HAFETZ: Five minutes at the most.

23 THE COURT: Mr. Hopper?

24 MR. HOPPER: I may waive, but no more than five  
25 minutes.

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2 THE COURT: We will have a short recess.

3 (Short recess.)

4 (Continued on page 4.)

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2 (In open court; jury present.)

3 THE COURT: All right, Mr. Kenney.

4 MR. KENNEY: Judge Metzner, defense counsel,  
5 Mr. Schulman, ladies and gentlemen of the jury:

6 This is a murder case. The defendants before  
7 you, Thomas Carroll, sitting first right here, Mike  
8 McCloskey, sitting back there, Robert Rippy, sitting over  
9 there with the blue shirt, and Billy McCloskey, sitting  
10 over there with the shirt and tie, are charged with the  
11 murder of William Hickey, a United States postal guard.

12 On April 5, 1973, Thomas Carroll, as he is  
13 know, Mike McCloskey, John Turner, Chester Crawford,  
14 Geoffrey Mann and Harry Johnson went to the Peck Slip  
15 area of New York where there is a post office commonly  
16 known as the Peck Slip post office, and from that point  
17 on that day, April 5, 1973, at about 5:00 o'clock in the  
18 afternoon, Billy McCloskey and Tommy Carroll drove in  
19 Tommy Carroll's car to the Federal Reserve Bank in New York  
20 on Maiden Lane and Tommy Carroll left Billy McCloskey  
21 out of the car and he drove around. Billy McCloskey  
22 observed the United States mail truck in question with  
23 a driver and a conveyor, a guard on it. He told Tommy  
24 Carroll to get back into the car.

25 Carroll and Billy McCloskey then drove back to

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2 the Peck Slip where the other six men were waiting and  
3 they notified them that the mail truck had left the Federal  
4 Reserve Bank.

5 Mike McCloskey was driving a van which was blue  
6 and had no identification on it, where the name had been  
7 painted over with a green paint. A man named John Turner  
8 was inside the van with them. And those two men waited  
9 for the mail truck to come to the Peck Slip station, and  
10 when it pulled out of the Peck Slip station they pulled  
11 in front of the truck and drove on what they knew to be  
12 the mail truck's route.

13 Tommy Carroll and Billy McCloskey drove behind  
14 the mail truck. In the meanwhile, two men, Terrence Myers  
15 and Geoffrey Mann, stationed themselves on the intersection  
16 of Beekman and William Streets on either side of Beekman  
17 Street next to the Beekman Downtown Hospital.

18 As the van approached that position where those  
19 two men were standing on the street, it stopped abruptly  
20 and the mail truck stopped behind it.

21 Myers jumped to the side of the mail truck and  
22 shot Mr. Hickey through the head. He died moments later  
23 in the hospital.

24 At that point, Geoffrey Mann took the guard --  
25 rather, I'm sorry, the driver, Crawford Lawrence out of

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mail truck, and attempted to put him in the back of the van as was planned. However, Crawford Lawrence ran down William Street. Mr. Manor stationed himself in the intersection of William and Beekman Streets and fired four or five shots after Crawford Lawrence as he ran down the street. Fortunately, he did not hit Crawford Lawrence and he will be here to testify as to the events that happened. He was, however, wounded by the same bullet that killed Hickey and you will find that his clothing was pierced by bullets as he ran down the street.

Chester Crawford and Harry Johnson, part of this carefully orchestrated plan, were driving around the area to see if any Federal or City or State police or Government people would be there to catch them.

Now, the indictment in this case, two indictments which have been joined together for trial, charge ten men with conspiring to rob a United States mail truck. The indictment is in three counts and that is the first count.

The second count charges that the men caused the death of William Hickey while they were perpetrating and attempting to perpetrate the armed robbery of a United States mail truck.

The third count in the indictment charges the

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1  
2 same men with assaulting Crawford Lawrence with the intent  
3 to rob a mail truck at a time when he was the custodian  
4 of the United States mail, referring to the mail in the  
5 truck.

6           You will see from the Government's case that  
7 Tommy Carroll, Mike McCloskey, Billy McCloskey and a  
8 man named Chester Crawford, long before this event, as  
9 early as January of 1973 or earlier, conspired with people  
10 not here before you and not directly related to this case,  
11 one of whom will testify here, to rob this very same mail  
12 truck, and that in early March of 1973 it became necessary  
13 to find some new men, and that happened in two ways:

14           The first way was Chester Crawford contacted  
15 Robert Rippy, right there, in Washington, to ask him to  
16 send him some trustworthy gunmen in order to hijack  
17 this truck. Mr. Rippy obliged. He send up Terence Meyers  
18 and Paul Crawford, Chester Crawford's brother.

19           They arrived in New York on the 20th of March,  
20 1973, and they met Chester Crawford and Chester Crawford  
21 drove them around the route of the mail truck, showed  
22 them where the station was and the route that they had  
23 thought would be the best place to rob this mail truck.  
24 Chester Crawford showed them where the mail truck came  
25 out of the Federal Reserve Bank.



The next day, a friend and confidante in crime of Terrence Myers, Geoffrey Mann, came to New York at Mr. Myers' request and, again, on the 21st Chester Crawford drove his brother, Paul Crawford, Terrence Myers and Geoffrey Mann around the area of the planned crime.

Thatnight Chester took Myers and Mann and his brother, Paul Crawford, over to a tavern in New Jersey where Meyers met with Tommy Carroll, and Carl told him of an event the next day which the Government will show you to prove the malice and incredible malice that these men had, a test, an armed robbery on the 22nd of March outside the Plaza National Bank in Secaucus, New Jersey, in an effort not only to get the money from the man they robbed, but to try out Myers and Mann to see if they were good enough to try the mail truck job. They were.

The rest of that week you will see was spend in endless meetings and conversations and following the mail truck, and at the week's end, Myers and Mann and Paul Crawford returned to Washington, D. C., which was their home town.

On the 26th of March, 1973, Monday night, they returned to New York. This time they have gotten rid of Paul Crawford, whom they didn't think was a very good



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2 armed robber, and they brought back another friend, a  
3 fellow named Harry Johnson. And from the 26th through the  
4 30th of March, these men go to the site of the mail truck,  
5 they come very close to attempting it, but for reasons  
6 which you will see from the witnesses who will testify  
7 right from that stand, they did not try it that week.

8           However, you will find from the Government's  
9 case that on the 26th Mike McCloskey stole a car in New  
10 Jersey from a car rental place for the purpose of using  
11 it in this event, and towards the end of that week that  
12 car was left in Pennsylvania, where eight of the men went  
13 on a frolic not directly related to this case, again.

14           On the 29th or 30th of March, Tommy Carroll  
15 stole the very van that was used on April 5, 1973, from  
16 the Schwartz Van Company in, I believe, North Bergen, New  
17 Jersey.

18           After the crime was committed on April 5, 1973,  
19 no arrests were made. All eight men left the scene of  
20 the crime. You will hear testimony as to where they went  
21 and conversations after that.

22           There were no eye witnesses who will testify  
23 other than the participants in the crime as to seeing  
24 any of these defendants at the scene of the crime. You  
25 will find from the Government's proof that they were in

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their vehicles and never got out of their vehicles at the scene of the crime. In fact, Carroll and Billy McCloskey callously sat in traffic behind the mail truck and when traffic was cleared they simply drove away.

The Government will call participants in the crime to testify as to exactly what happened. These will not be nice people. In fact, they are criminals, people who have pleaded guilty to part or all of the indictment in this case. They are, however, the only people with the information that you need.

You will find that John Turner, during the course of this crime, was, in fact, an informant for the FBI. However, he chose to take this one for himself and not to report it. He has pleaded guilty and he will testify here to the facts.

In addition, the Government will present documentary evidence from various business companies and firms to show you and to corroborate the various activities of these men during the period of time that this crime was hatched and then attempted.

We ask you to listen very carefully to the testimony of these co-conspirators and these accomplices and to compare the testimony to see, as the end of the case will approach, how the facts will fall together and

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you will find that these four men are responsible and guilty of the three crimes of which they are charged in this indictment.

Thank you.

THE COURT: Mr. Diranzo.

MR. MARTIN: If your Honor please, may we approach the bench?

THE COURT: Yes.

(At the bench)

MR. MARTIN: If your Honor please, from the opening of the United States Attorney, I think it is highly inflammatory, for one thing, because he has named at least seven or eight claims that are totally unrelated to this. He is bringing this in solely and only for the purpose of prejudicing the defendants, and even more important, and I think of prime importance to this, a lot of this stuff which he has just come out with now has not been set forth in an indictment, hasn't been set forth in a bill of particulars. We are not even in a position to set up a defense or know where it is coming from. I think it is grossly unfair. He is evidently going to introduce acts that would constitute crimes without even charging the defendants with crimes.

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We had no information at all about any of this, not even a hint that these specific things were coming in. He is bringing in a full-blown bank robbery that we weren't even aware of. I think it is very unfair to the defendants, very high prejudicial. I don't think this case can be tried that way with this information if this information is put in.

THE COURT: Your exception is noted.

MR. MARTIN: At this point I am moving to dismiss it and registering my protest on the ground we are not properly prepared and can't even move to debate it --

THE COURT: Denied.

MR. HOPPER: Your Honor, may I raise two points?

THE COURT: Mr. Direnzo?

MR. DIRENZO: I will just adopt the arguments made by Mr. Martin and predicated thereon move for a mistrial and withdrawal of a juror.

I think this conglomeration of crimes makes it utterly impossible to try the specific charge here, because I think and feel that he is going far beyond the purview of the indictment and we are dealing with a multiplicity of crimes that we weren't prepared to meet issues on. Had we been alerted to it, we would have

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2 handled it prior thereto and we would have had the Court's  
3 rulings on it.

4 THE COURT The motion is denied.

5 MR. HOPPER: Your Honor, two things:

6 One, procedurally, I am wondering if it is going  
7 to be necessary each time there is an objection for  
8 counsel --

9 THE COURT: I was going to ask counsel to remain  
10 after I discharged the jury to discuss this problem.  
11 Let us not do that now.

12 MR. DIRENZO: Fine.

13 MR. HOPPER: May I ask this question:

14 There was a reference made to this Secaucus  
15 robbery and he was going to offer it in evidence on the  
16 grounds of malice, to show malice.

17 Do I understand your Honor's ruling is that he  
18 is going to be permitted to offer proof of that crime?

19 THE COURT: This was part of the dress rehearsal  
20 for this crime. This is what he claims and I see no  
21 reason to exclude it.

22 MR. MARTIN: A dress rehearsal, that was the  
23 sole purpose for the crime, the bank robbery?

24 THE COURT: That's what he said.

25 MR. MARTIN: I think that is inflammatory and  
oppressive --



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2 THE COURT: If it is true --

3 MR. MARTIN: Even if it is not true, we will  
4 be so prejudiced by the evidence, going into it is  
5 impossible.

6 THE COURT: I will worry about that when it  
7 happens.

8 MR. HOPPER: He said the basis for that proof  
9 was to show malice. I don't think that is a proper  
10 basis for introducing such evidence.

11 THE COURT: We will worry about that when he  
12 offers it.

13 MR. HOPPER: I join in the motion.

14 MR. HAFETZ: For expediency, may the objection  
15 of one counsel be noted for all counsel?

16 THE COURT: I said, after the jury is dismissed  
17 this afternoon, we will discuss the procedure, so we  
18 don't go through the same procedure every time an  
19 objection is made.

20 (In open court; jury present.)

21 THE COURT: You may open, Mr. Direnzo.

22 MR. DIRENZO: Thank you.

23 May it please the Court, counsel for the defense,  
24 Mr. Kenney, Mr. Foreman, ladies and gentlemen of the jury:

25 The Court gave you admonitions before the

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recess and you can recognize now how important those  
admonitions are, how important it is that you heed those  
warnings.

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11 1                   He told you basically not to discuss the case;  
2                   he told you to keep an open mind. You have only been  
3                   selected as jurors; you have just been sworn as jurors;  
4                   you can readily see that at this given moment how vital  
5                   those concepts are in the defense of any man in a criminal  
6                   case.  
7

8                   As you sit here now, having heard that which  
9                   Mr. Kenney said to you, you could just as well retire to  
10                  that jury room without even taking a second look. If you  
11                  just listened to what Mr. Kenney said, you could do that.  
12                  That is why his Honor told you to keep an open mind. He  
13                  will continue to tell you that at various stages of this  
14                  trial. Now please listen to that, because you might find  
15                  that Mr. Kenney may not be able to keep all of the promises  
16                  he has made to you. And I will ask you consonant with the  
17                  oath that you have just taken to remember and keep remember-  
18                  ing that what Mr. Kenney said to you is in no manner,  
19                  shape or form, evidence. It is not. The only evidence  
20                  you will hear in this case will be evidence that is  
21                  funnelled through witnesses on that witness stand, witnesses  
22                  who will be cross-examined. And it will ultimately become  
23                  your job to determine who is telling the truth and who is  
24                  lying, whether an individual or a witness has a motive to  
25                  lie. Those are all factors that you will consider in

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1 applying your God-given common sense when you ultimately  
2 get into that jury room.  
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4 Anything I say to you is not evidence either.  
5 It works both ways. But I can't caution you too much to  
6 please remember those concepts.

7 There are other little things I would like to  
8 bring to your mind that I am sure could constitute a source  
9 of annoyance to jurors. You find very often that counsel  
10 asks permission to approach the bench, and sometimes it  
11 looks kind of silly to see all the lawyers walk up and  
12 talk to his Honor. It has a very, very good reason for it.  
13 We are not looking to waste time. It doesn't put a dollar  
14 in our pockets. The best way for me to describe it is to  
15 liken it to a hospital where a patient is being operated  
16 on for major surgery. The surgeon is very careful in  
17 preparing his hands to make sure he is completely sterile,  
18 to make sure that no infection will creep into the incised  
19 area. We do substantially the same thing. You might  
20 find that the operation could be successful, but the  
21 patient dies from infection. We don't want any infectious  
22 bias or prejudice to creep into this trial. And that is  
23 why his Honor was so careful in giving you those admonitions.

24 So at any stage in this proceeding, in this  
25 trial, which probably will be a reasonably lengthy one,

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1 don't hold that against us in doing that, because you will  
2 be holding it against our clients.  
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4 The defendant Carroll has entered a plea of not  
5 guilty in this case. And when he said, "I am not guilty,"  
6 he then has stated to you that he did not commit this  
7 crime. I, like you, intend to be very patient and wait for  
8 these witnesses who will testify. I'm going to ask you to  
9 remember another thing: the charge here is robbery or  
10 attempted robbery of a mail truck; there is a charge of  
11 murder; there is a charge of assault. Let us just remember  
12 that those are the sole issues for you to decide in this  
13 case.

14 Talk about Secaucus, talk about The Plaza, his  
15 Honor will give you appropriate instructions as to that,  
16 and I sincerely hope and know that you will abide by those  
17 instructions and apply it to this case.

18 Above all, at no point do I anticipate that  
19 there is any area where Mr. Kenney fails in his proof that  
20 you will substitute anything he made in his opening statement  
21 to you for that proof. You, we say, are going to determine  
22 the guilt or innocence of these defendants. And my client,  
23 Mr. Carroll, seeks no favors, no gratuity, nothing; all he  
24 wants is justice in a court of law. And I don't know of any  
25 better place to find it than with 12 jurors.



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2 Sure, it's not the perfect system, but we have  
3 not found a system that is better than this. Sometimes we  
4 overlook things; we find very often that jurors find things  
5 and see things that we never saw or recognized.

6 So I say to you, ladies and gentlemen, having  
7 the amount of respect that I have for the jury system, I  
8 am satisfied that we have a proper jury, and that you will  
9 make a proper determination on the facts in this case.

10 Thank you.

11 THE COURT: Mr. Martin?

12 MR. MARTIN: Judge Matsner, Mr. Kenney,  
13 Mr. Carey, Mr. Drenzo, Mr. Hopper, Mr. Hafetz, Mr. Schulman  
14 and ladies and gentlemen of the jury:

15 My name is John Martin. My client is Vincent  
16 McCloskey, who is seated there in the green shirt. During  
17 the course of the trial, and especially a trial of this  
18 nature and magnitude at times tempers may flare and things  
19 may be said under duress or under pressure.

20 If during the course of the trial I have  
21 occasion to argue too loudly and make a gesture, or perhaps  
22 to make an objection, and if you people feel that it is not  
23 in line or that it is out of order, I would like to  
24 apologize now in advance, because the only purpose that I  
25 have here -- and I am sure my co-counsel have -- is to try  
to properly represent my defendant.

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2 I am here to represent my client, Mr. Vincent  
3 McCloskey, who, as you know by now, faces a very, very  
4 serious charge. Mr. Kenney went to great lengths in  
5 naming all kinds of acts and all kinds of deeds. I ask  
6 you, though, to listen and wait to the end and listen  
7 to the Judge's instructions on what is permitted in and  
8 what is not permitted in, and then to evaluate all of this  
9 with your own common sense. Apply your common sense to the  
10 charges according to the instructions given by the Court,  
11 and not by what Mr. Kenney says, not what I say, or not  
12 what any of the other defense attorneys say, but according  
13 to the evidence, according to the witnesses, what they say,  
14 the documents that come in. I ask you to very carefully  
15 keep your minds open. I ask you very carefully to listen  
16 to those witnesses and then apply it to the charges that  
17 these defendants are charged with, specifically in this  
18 indictment that Mr. Kenney referred to.

19 And there are not 20 charges; there are three  
20 charges. One is a conspiracy that Mr. Kenney mentioned.

21 The Judge will instruct you what a conspiracy  
22 is. Essentially, conspiracy comes down to an agreement or  
23 a partnership. And it is up to Mr. Kenney to prove this  
24 conspiracy of ten individuals who come into a partnership.  
25 Then he has to show the second count of murder. And here

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1 the murder took place with a gun; somebody was shot. He  
2 has to show that my defendant, Mr. McCloskey, killed him.  
3 I don't think he can show that. He can show that somebody  
4 killed him; he can show that a man was shot, a man is dead,  
5 but that doesn't mean that my client is responsible for it.  
6 And the same goes for the third count of the indictment,  
7 which is an assault, and the incidents that were involved  
8 in these counts involve one incident that happened on  
9 April 5, 1973. It has nothing to do with what happened in  
10 New Jersey or Washington or somebody spitting on the sidewalk  
11 or doing something else.  
12

13 These are the three counts that we are charged  
14 with. I ask you to take that into consideration.

15 I will ask one other thing of you. I think at  
16 the end of the evidence will you certainly find a crime has  
17 been committed; you will find the man has been killed. I  
18 think you will probably find that maybe another man was  
19 assaulted. I don't think you're going to find any conspiracy,  
20 and I don't think you can possibly find that ten people did  
21 all of these things.

22 But just because a man was killed -- and any  
23 time a human being dies I think we all lose -- but just  
24 because tragic events happen or just because a felony is  
25 committed, that doesn't necessarily mean those events were  
caused by the people charged with it by the government.

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2 So I would like you to keep an open mind; the  
3 only place you are going to get the evidence from is from  
4 that witness stand and the documents introduced in evidence.  
5 And without knowing the evidence, I think what you are going  
6 to get from that witness stand is testimony from confessed  
7 killers, confessed burglars, confessed robbers. These are  
8 the people who in order to salvage something of their own  
9 miserably warped and wrecked lives, are trying in some  
10 fashion to bring others in.

11 I ask you to be very careful in analyzing their  
12 testimony. Listen to it; pay close attention to it.

13 Again, I thank you for your time and for your  
14 patience.

15 THE COURT: Mr. Hafetz?

16 MR. HAFETZ: May it please the Court, Mr. Foreman,  
17 ladies and gentlemen of the jury:

18 My name is Frederick Hafetz. I represent the  
19 defendant Robert Rippy in this case, the gentleman in the  
20 blue shirt and blue trousers. I represent only one  
21 defendant in this case.

22 As you have been told, this is a most serious  
23 case. You have been told by the prosecution that a man has  
24 been shot and killed.

25 The defendant Rippy does not contest that  
allegation that was made by the prosecution, that a man was



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1 shot and killed. However, because the allegation is so  
2 serious, the other side of that coin is that the conse-  
3 quences could be very serious for the defendant. And so  
4 I would ask that in listening to this trial and listening  
5 to the evidence you keep in mind certain basic propositions  
6 that lie at the heart of our system of criminal justice,  
7 that each and every one is entitled to, and that would  
8 apply on our behalf if by some turn of the wheel we found  
9 it was us who sat in that chair as a defendant in a  
10 criminal case.  
11

12 First and foremost, we must understand that the  
13 defendant is presumed innocent; he is presumed innocent  
14 all through the trial, to your deliberations, until a  
15 verdict is reached in the case. The burden at all times  
16 rests upon the prosecution to prove the defendant guilty  
17 beyond a reasonable doubt.

18 It is a burden that never moves; it is a burden  
19 that never shifts from the prosecution and leaps over to  
20 defendant Rippy. The defendant Rippy has no obligation  
21 whatsoever, no burden whatsoever to offer proof; he has no  
22 burden to satisfy you of his innocence; the defendant Rippy  
23 has no obligation to testify if he chooses not to testify.

24 That burden stays and remains in one place  
25 throughout the entire proceedings. It is a burden upon



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23

1 the prosecution at all times to convince you, each and  
2 every one of you, beyond reasonable doubt that the  
3 defendant is guilty of the charges and the piece of paper  
4 that has been referred to. By the piece of paper, I mean  
5 the indictment.  
6

7 Now, I would ask that throughout the proceedings--  
8 as I am sure you will -- you listen to all the questions put  
9 and the answers, not only the answers on direct examination  
10 when the prosecution questions a witness on the stand, but  
11 also the answers given on cross-examination, for they often  
12 may be more vital in your understanding of the case, your  
13 understanding of the motives, in trying to see why a witness  
14 is testifying the way he is. And in that, cross-examination  
15 may indeed prove to be the most vital part of the case. So  
16 I would ask you, listen to everything as you listen to the  
17 testimony of the self-confessed criminals that the government  
18 will present as its sole truth, its sole live testimony in  
19 this case as to what happened.

20 I ask that you keep in mind every answer that  
21 they give as their motives are searched, as questions may  
22 bring out inconsistencies, contradictions, gaps that are not  
23 filled in by the witnesses' testimony. And you keep all of  
24 that in mind as you listen.

25 I am confident that you will find at the con-

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1 clusion of the proceedings that the prosecution has not  
2 fulfilled that burden of proving the defendant guilty beyond  
3 a reasonable doubt. Thank you.  
4

5 THE COURT: Mr. Hopper.

6 MR. HOPPER: Your Honor, Mr. Foreman, ladies  
7 and gentlemen of the jury:

8 I represent the defendant William McCloskey,  
9 who is seated by Mr. Hafetz.

10 Many times during the course of this trial I  
11 am going to get up in court after you have heard everyone  
12 else, and you probably hope I will not say anything. I  
13 would like to ask this of you: my client stands alone, as  
14 does each of the other individual defendants. We don't  
15 stand or fall with anyone else. So it is essential that  
16 when I talk to you that you listen to me. I must necessarily  
17 repeat many of the points that the other lawyers have made  
18 before me. But if my defendant is to receive a fair trial,  
19 you have to listen. I will always try to be brief with you.  
20 I hope it is not too often that we are talking this late in  
21 the afternoon.

22 I would only add one thing, that as these  
23 witnesses that Mr. Kenney referred to -- and I think he  
24 indicated to you that they were probably some pretty bad  
25 people -- as they testify, each one, and at each stage in

1 mmd11

2 his testimony, I would ask that you say to yourselves,  
3 "Would I believe him if I met him in the ordinary course of  
4 my business affairs? Is he worthy of belief?" I can ask  
5 nothing more from you than that you give that consideration.  
6 Thank you.

7 THE COURT: I might say Mr. Hopper said he  
8 hoped he would not be talking this late in the afternoon.  
9 I am afraid we will, because the court hours are from 10:00  
10 in the morning until 4:30 in the afternoon.

11 You are now excused until tomorrow morning at  
12 10:00 o'clock. Be here in court on time so that we can  
13 start promptly.

14 MR. KENNEY: Before the jury leaves, I ask that  
15 they be requested not to go to the scene of the crime in  
16 this case, which is fairly close to the courthouse.

17 THE COURT: I would repeat to you or recall to  
18 you what I said just a little while ago, that you are not  
19 to discuss this case with anyone; don't let anybody talk to  
20 you about it; if anybody outside of this courtroom tries to  
21 draw you into conversation regarding this case, I want you  
22 to report it to me immediately. It is a serious matter.

23 It is your function as jurors to listen only to  
24 the evidence, and not to anybody else, nor discuss the case  
25 with anybody else. I ask you to do that.

1  
2 As Mr. Kenney pointed out, the scene which you  
3 will be hearing about is relatively nearby the courthouse,  
4 and I must ask you, please, not to go to it.

5 And you have heard the Beekman Street Hospital  
6 and William Street described here by Mr. Kenney.

7 (Jury excused.)

8 THE COURT: Now, the further discussion that  
9 came up at the bench, to the extent that it is possible,  
10 I would like to have every objection made by one counsel  
11 be deemed as an objection by all counsel, so you don't have  
12 to have a repetition of the same grounds all the time. I  
13 will hear other counsel if they feel that it is necessary  
14 to assert something in addition to that voiced by the first  
15 objecting counsel. However, I would ask you to try and  
16 keep your duplicating objections to a minimum.

17 Secondly, if it is possible -- and here again  
18 it is a problem which only counsel can determine amongst  
19 themselves -- but I would ask in all good faith that counsel  
20 limit the cross-examination of witnesses to one counsel.  
21 If that can't be done, I must state that if other counsel  
22 wish to conduct cross-examination because they feel that  
23 their particular client is intimately involved in the testi-  
24 mony of the witness, then I must say that I will not allow  
25 repetition on the same line of cross-examination.



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I think those of you who appeared before me before, Mr. Direnzo and Mr. Hafetz, know what I mean. This is not an attempt to limit your right to cross-examination; it is merely an attempt to cut down duplication, unnecessary duplication. So that if counsel feel they must cross-examine in addition to what has been, to bring out matters additional to that brought out by prior counsel on cross-examination, I must, as I said before, tell you that I will not allow duplication of what has gone on before. You may cross-examine on matters that were not brought out by prior counsel, but I will not allow duplication as to what has been testified to, because once having been said, that is the answer, unless, of course, you're going to try to change that answer by further testimony, which, of course, you have a perfect right to do.

Are there any questions about that?

MR. DIRENZO: Then I take it that it is directed now that you would like this procedure to be followed with reference to the making of objections by counsel, and so the record is clear, any objection taken by one inures to the benefit of all counsel?

THE COURT: That is true.

MR. DIRENZO: Unless they say they do not participate in it.



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1  
2 THE COURT: That is right.

3 MR. DIRENZO: The other point I would like to  
4 suggest: it might well be that when a given witness  
5 testifies, that given witness might not put a particular  
6 client in focus; he might put another defendant in greater  
7 focus than one of the other defendants. I ask your Honor  
8 if you would permit us to change our plan, rather than  
9 following in the order that we appear in the indictment,  
10 if we feel that the best interests of all concerned would  
11 be served that way.

12 THE COURT: Well, that is a little difficult  
13 for me to do, because I don't know what is going to happen  
14 from witness to witness, what the answers will be. I may  
15 evaluate a witness' testimony different than you do. I am  
16 sure you will be up first, because you have that right.  
17 But if you want to waive, obviously, I will recognize your  
18 right to waive. If you do, then you may still want to  
19 cross-examine when all is finished. If so, you're going to  
20 be limited to something not brought out by anybody else.  
21 That I want clear.

22 MR. DIRENZO: You have made it clear. The  
23 other point is, we are having some difficulty in being able  
24 to sit down with the various defendants where it is con-  
25 venient for them to fully discuss their problems with counsel.

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29

1 I would respectfully suggest if at all possible that suit-  
2 able arrangements be made at the termination of the court  
3 session so they can tell us specifically what they want us  
4 to do.  
5

6 THE COURT: I will have to leave that to the  
7 marshals and to Mr. Kenney. Three of the defendants, I  
8 understand, are incarcerated? Is that right, Mr. Kenney?

9 MR. KENNEY: That is correct.

10 THE COURT: One is not, that is, Mr. William  
11 McCloskey. So he is not involved. We are talking about  
12 three defendants. I am not aware of what the facilities  
13 are downstairs for your discussion, but I am sure the  
14 marshals and Mr. Kenney will cooperate with you in making  
15 space available.

16 MR. DIRENZO: I recognize this is an imposition  
17 on the marshals, and I don't like to impose on them, but  
18 under the circumstances --

19 THE COURT: I think it is a fair request under  
20 the circumstances. And whether they use the witness room  
21 here or the space downstairs, is something you can work out  
22 with the marshals.

23 MR. HOPPER: Your Honor has just ruled on the  
24 objections. Do I take it that that is retroactive to  
25 include the motions for mistrial made by Mr. Drenzo?

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1 THE COURT: Yes, it is, Mr. Hopper.

2 MR. KENNEY: Your Honor, we call the Court's  
3 attention to the fact that we have been unable to reach any  
4 stipulations of any kind in this case, and, therefore, our  
5 original estimate that our case will be in in three days  
6 may not be so, and it may be slightly longer. It is a  
7 question of how much longer.  
8

9 MR. DIRENSO: We can go into stipulations tonight  
10 if you will give them to me; I will discuss them with  
11 counsel and co-defendants to see to what extent they will go  
12 along with the stipulations. If they don't go along with  
13 all, they may go along with part.

14 MR. KENNEY: We did this on Friday night, and  
15 Mr. Martin takes the position that since he believes his  
16 client is incompetent, that his client cannot sign any  
17 stipulation, and since one counsel won't sign, it makes it  
18 futile to try to get others to agree, although we are still  
19 willing to try.

20 THE COURT: I have made a ruling as to  
21 Mr. McCloskey's ability to stand trial based on three  
22 psychiatrists' reports. I don't know how much more I can  
23 do in that regard. There is no dispute between the three  
24 of them, so it is up to Mr. Martin to handle his case the  
25 best way he can. He knows his obligations to his client;

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he knows his obligations to the Court. He may reach a different conclusion after speaking to Mr. Direnzo and Mr. Mafetz and Mr. Hepper. It raises a problem, but he knows he has an obligation to his client; obviously, he also knows he has an obligation to the Court.

MR. MARTIN: Your Honor, rather than let the record stand that way, I never represented to Mr. Kenney or to anyone else that I felt competent enough to judge if Mr. McCloskey was incompetent or not, but there was definitely a question whether or not he understands me, and at this point I would not like to have him execute a paper unless he knows exactly, and that is the reason that I told Mr. Kenney that I would not be in position to have him sign the form of stipulation.

I was not too pleased with --

THE COURT: I'm not going to get into that discussion, Mr. Martin; that is not my function.

(Whereupon, an adjournment was taken to December 11, 1973, at 10:00 o'clock a.m.)

- - -



2 UNITED STATES OF AMERICA

3 -v- 73 Cr. 855

4 THOMAS JOSEPH CARROLL, et al.,

5 -and-

6 UNITED STATES OF AMERICA,

7 -v- 73 Cr. 972

8 WILLIAM McCLOSKEY, et ano.

9 December 11, 1973  
10 10:30 a.m.

11 (In the absence of the jury.)

12 THE COURT: May I see counsel at the bench,  
13 please?

14 (At the bench.)

15 THE COURT: Mrs. Goodman, Alternate Juror No. 3,  
16 or 2, her number was, subsequently excused on the appli-  
17 cation of the government, has informed my law clerk that  
18 yesterday she was speaking to Mrs. Swanson during the  
19 selection of the jury and that Mrs. Swanson told her that  
20 she was attacked by a sister of a Black Panther and is  
21 pressing charges and the trial is coming up in two weeks.  
22 I suggest that we have Mrs. Swanson brought into court, or  
23 we can do it in the robing room, and interrogate her con-  
24 cerning this before we proceed.

25 MR. HOPPER: She just spoke to me in the corridor



1  
2 and asked me whether she could take notes, and I told her  
3 she would have to address that question to your Honor.

4 THE COURT: And Juror No. 6, Mr. Sharrow,  
5 forget to apprise the Court of the fact that he has a son  
6 who is an attorney and who is now out front.

7 MR. DIRENZO: That means he is in the courtroom.

8 THE COURT: I think it is safe to ask him to  
9 leave. I don't think there is any duty, really, to tell us  
10 his son is an attorney, because I didn't ask the question.

11 MR. DIRENZO: Unless at one time or another he  
12 was in a prosecutor's office.

13 THE COURT: (Addressing the spectators)  
14 Mr. Sharrow, will you come up here, please?

15 (Mr. Joel Sharrow made his appearance at the  
16 bench.)

17 THE COURT: Were you in court yesterday?

18 MR. JOEL SHARROW: No, I was not.

19 THE COURT: I will have to ask you not to stay  
20 in the courtroom, because there are possibilities of talk  
21 that we must guard against. Your father will be apprised  
22 by the Court each day not to discuss the matter with any-  
23 body, but I think it reduces any possibility in a serious  
24 case like this if you are not in the courtroom.

25 MR. JOEL SHARROW: The only reason that I came

down today was that I had not been home for a couple of days and did not realize my father had been called for jury duty, and when we were driving in this morning he mentioned it, and I asked whether he had advised your Honor that he had attended law school and had had one or two pro se cases here.

THE COURT: Your father did?

MR. JOEL SHARROW: Yes. He had the background, and he said the questioning was very minimal yesterday. That is the only reason I am here. I thought that on behalf of my father it would be best if the Court and the attorneys were advised before trial and understood this completely. I am under the impression there are several alternate jurors. If the Court and the attorneys still see fit to let my father sit on the jury, he is an educated man, and I think he will give an objective analysis of the facts. However, I thought everybody should be fully advised of the situation. He told me he was only minimally examined yesterday.

THE COURT: Let us start, Mr. Sharrow, by asking you to leave the courtroom if you don't mind during the proceedings.

MR. JOEL SHARROW: Fine.

MR. HAFETZ: May I ask what Mr. Sharrow's field

of law is?

THE COURT: We are going to call Mr. Sharrow.

MR. HAFETZ: I mean the younger Sharrow.

MR. JOEL SHARROW: I have been doing some civil litigation. I am not a member of the Bar here in the Southern District, but I am a member of the New York State Bar.

MR. DIRENZO: If I may, your Honor --

Have you ever served on a prosecutorial staff in any county?

MR. JOEL SHARROW: No, I have not.

THE COURT: Thank you very much.

(Mr. Joel Sharrow leaves the courtroom.)

THE COURT: I think we will retire to the robing room and we will first have Mrs. Swanson.

MR. DIRENZO: While we are here, in reading Mr. Kenney's opening statement to the jury last night, I feel that I should add to the motion that I made for a mistrial yesterday, and I add to that motion the fact that in making his opening statement to the jury he, in fact, is acting as an sworn witness.

THE COURT: Motion denied.

MR. MARTIN: I join in the motion.

THE COURT: We agreed yesterday that one object

ion covers all.

MR. MARTIN: And that covers motions?

THE COURT: Obviously.

MR. DIRENZO: Unless we take the position that we do not join in it.

THE COURT: I want to tell you something, Mr. Martin. I took a quick look over some requests to charge that you furnished the Court this morning. I didn't read them very carefully, but I got the impression from what you have requested plus what you said yesterday that your defendant cannot be convicted of murder unless he actually shot the person? Is that correct?

MR. MARTIN: What I did, your Honor, in this particular charge, I took a charge that the prosecution had and then just worded it in reverse. That is all.

THE COURT: But yesterday in your opening to the jury I think you said that your man was not guilty of murder unless he killed a man.

MR. MARTIN: I don't think those were the exact words.

THE COURT: Where is the transcript of yesterday? "He has to show that my defendant, Mr. McCloskey, killed him."

He doesn't have to show that.



1  
2 MR. MARTIN: I didn't say the ; actually had to  
3 show that he pointed the trigger.

4 THE COURT: This is the impression that I got  
5 when I listened to your opening to the jury yesterday. I  
6 was going to interrupt you and say that the determination  
7 of what the law is is my function and not yours. But  
8 reading this, coupled with what you submitted to me today,  
9 gives me the impression that you're going to argue to the  
10 jury, and <sup>you are</sup> under the impression, that a man can only be guilty  
11 of murder if he is the one who killed, and obviously, that  
12 is not so.

13 MR. MARTIN: In the generalized sense of killing.

14 THE COURT: I said, obviously, it is not true  
15 that your defendant cannot be convicted of murder unless he  
16 actually fires the shot that killed the man.

17 MR. MARTIN: I agree with the Court.

18 THE COURT: Fine, Mr. Martin. That is all I  
19 want to clarify.

20 MR. MARTIN: I have one more motion I would like  
21 to make. Your Honor, we were served with this supplemental  
22 bill of particulars this morning and in it there are three  
23 new co-conspirators named. This was the first information  
24 that I have been able to ascertain as to these, and I'm  
25 going to ask for a continuance of this trial to investigate.



1 I think it is prejudicial at the last minute to be served  
2 with this, and I think the defendant is surprised.

3  
4 THE COURT: Mr. Kenney?

5 MR. KENNEY: We have just discovered these co-  
6 conspirators exist ourselves, last week, and, in fact, we  
7 didn't have the full names until Sunday. We gave the bill  
8 of particulars in compliance with our particular obligation  
9 to disclose these things.

10 THE COURT: The motion is denied.

11 MR. MARTIN: I assume we have exceptions?

12 THE COURT: You don't have to ask for exceptions  
13 in the federal court.

14 Let us retire to the robing room.

15 (In the robing room.)

16 (Mrs. Hazel Swanson, Juror No. 2, made her  
17 appearance in the robing room.)

18 THE COURT: Mrs. Swanson, the Court has been  
19 advised that you have been attacked by a sister of a Black  
20 Panther and that you are pressing charges.

21 MRS. SWANSON: Yes.

22 THE COURT: Well, we asked that question yester-  
23 day and you never told us.

24 MRS. SWANSON: Well, I didn't see where it was  
25 relevant to this.

1  
2 THE COURT: You were asked whether you or any-  
3 one in your family had been the subject of an attack. It  
4 is true, then?

5 MRS. SWANSON: It is true.

6 THE COURT: And you are pressing the charges?

7 MRS. SWANSON: Yes, January 4.

8 THE COURT: We will have to excuse you from the  
9 jury.

10 MRS. SWANSON: Okay; good.

11 THE COURT: Hereafter you must answer questions  
12 that are put to you by the Judge, and not keep the inform-  
13 ation to yourself. You have upset this trial, Mrs. Swanson  
14 by failing to tell us.

15 MRS. SWANSON: I'm very sorry, but I didn't see  
16 any point to it.

17 THE COURT: You were asked whether you had been  
18 attacked.

19 MRS. SWANSON: I can't see that that has anything  
20 to do with this.

21 THE COURT: That is not your determination.  
22 You were asked whether you were attacked and you didn't tell  
23 us. Now you are excused. You have upset this trial con-  
24 siderably, Mrs. Swanson.

25 MRS. SWANSON: Okay.

(Mrs. Swanson leaves the robing room.)

THE COURT: We will move Alternate Juror No. 1 in Mrs. Swanson's seat.

(Mr. Victor Sharrow, Juror No. 6, makes his appearance in the robing room.)

THE COURT: Mr. Sharrow, your son, who was sitting in the courtroom, was called up for the purpose of asking him, really, as a favor -- we couldn't order him out of the courtroom -- not to sit during the court trial since you were sitting as a juror, but he says you are an attorney.

MR. SHARROW: No. I went to law school; I didn't practice; I'm not a member of the Bar; I was an electrical contractor and I decided to go to New York University Law School, and I now teach vocational electricity.

THE COURT: Did you ever appear in court on behalf of anyone?

MR. SHARROW: I appeared in several pro se actions of my own.

THE COURT: What type were they?

MR. SHARROW: To enforce Section 2 of the 14th Amendment, which deals with apportionment, the census.

THE COURT: Is that all?

MR. SHARROW: That is all.

THE COURT: Any objection?

MR. DIRENZO: Those were basically constitutional questions which you urged on either the state or federal constitution?

MR. SHARROW: Under the federal, Section 2 of the 14th Amendment.

THE COURT: On the propriety of the census?

MR. SHARROW: It is right here in the paper this morning (indicating): Yes, it is illegal and wrong.

THE COURT: Any further questions?

MR. DIRENZO: I have none at this time, if your Honor please.

MR. KENNEY: Did you go to law school the full term? Did you graduate from law school?

MR. SHARROW: Yes, sir, 19 years ago, but I never practiced and never have been a member of the Bar. I was an electrical contractor and I am teaching vocational electricity.

THE COURT: Do you have any objection, Mr. Kenney?

MR. DIRENZO: You were admitted to the Bar?

MR. SHARROW: No.

THE COURT: Mr. Hafetz?



MR. HAFETZ: I have nothing.

THE COURT: Mr. Martin?

MR. MARTIN: No.

THE COURT: Mr. Hopper?

MR. HOPPER: No.

MR. SHARROW: Thank you. I think I could be fair-minded; I really do.

THE COURT: Do me a favor, immediately return to the jury room.

MR. DIRENZO: One other admonition --

THE COURT: Don't tell the jurors what happened here.

MR. SHARROW: That is why I wanted to speak to you individually.

THE COURT: Thank you very much.

(Mr. Victor Sharrow leaves the robing room.)

MR. HAFETZ: I didn't want to note an objection in his presence. I've got reservations about this juror, this law school education.

MR. KENNEY: I join in the objection for the same reason.

THE COURT: As I understand it, you and Mr. Kenney both want him stricken from the jury?

MR. HAFETZ: Could I have just a minute to



1 mnd

2 confer with my co-counsel?

3 THE COURT: Surely.

4 (Pause.)

5 MR. HAFETZ: Judge, there doesn't seem to be a  
6 consensus among us, so I will speak individually.

7 THE COURT: I want it understood when we came  
8 to the selection of the jury yesterday I said that you  
9 could use your challenges anyway you wanted, individually  
10 or as a group. Now, if somebody wants a juror off and makes  
11 that motion before me, I will determine that as coming from  
12 the particular counsel without regard to the wishes of other  
13 counsel.

14 MR. HAFETZ: I have got a motion to excuse this  
15 juror?

16 THE COURT: Do I understand, Mr. Kenney, that  
17 you join in it?

18 MR. KENNEY: That is correct.

19 THE COURT: The application is granted, and  
20 Alternate Juror No. 2 will move into Mr. Sharrow's spot.

21 Mr. Frezzo, tell Mr. Sharrow after further dis-  
22 cussion the Court has decided that perhaps in the abundance  
23 of caution he should not sit on the jury. I will take the  
24 burden for it.

25 MR. KENNEY: We have one matter of timing. We

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1  
2 intend to ask the Court to grant immunity to certain  
3 witnesses when we question them with reference to the  
4 robbery of a man outside the Plaza National Bank on March  
5 22, 1973. Nobody has ever been apprehended for the crime,  
6 and the witnesses in question have indicated that if they  
7 are asked to testify as to the facts in the case they would  
8 take the Fifth Amendment.

9 THE COURT: I would have to caution them to  
10 take the Fifth Amendment.

11 MR. KENNEY: Our plan is to question the  
12 witness as to all of his testimony first and then to  
13 question him with regard to that event, have him take the  
14 Fifth Amendment, and present your Honor with the appropriate  
15 order application and letter from the Attorney General and  
16 so forth.

17 THE COURT: I would suggest that when you reach  
18 that point that you want the question to be asked that you  
19 let me know; we will excuse the jury; you then show the  
20 papers to counsel so they can look at them; then we can  
21 rule on the requests in the absence of the jury. I always  
22 excuse the jury in this situation.

23 MR. KENNEY: We will want it to be out of the  
24 presence of the jury.

25 THE COURT: You just inform me at the time.

1  
2 MR. DIRENZO: I would like to think about that  
3 a little bit.

4 THE COURT: I won't permit a man to plead the  
5 Fifth in front of the jury.

6 MR. DIRENZO: That is one of the things I am  
7 concerned about. And the other thing I am concerned about  
8 is that in his pleading of the Fifth -- I am only thinking  
9 out loud -- and putting all these other defendants in, or  
10 some of them, it puts us in a very dangerous position.  
11 Frankly, I don't think he should be permitted to do it.  
12 But that is something else. We have to abide by your  
13 Honor's ruling, whatever it is, and, of course, I would  
14 object to any of his testimony coming in. That was one of  
15 the reasons we made the motion for a mistrial, but I would  
16 like to think about it a little bit.

17 THE COURT: You were not being asked to make  
18 up your mind now, but give the defendants copies of the  
19 papers so they can peruse them well in advance. Is it your  
20 first witness?

21 MR. KENNEY: No. Perhaps this afternoon.

22 THE COURT: Let counsel see the papers.

23 MR. DIRENZO: Can we ask you now whether you  
24 have the Peterson letter?

25 MR. KENNEY: Yes.

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MR. DIRENZO: And the order is under 7001 or 7002?

MR. KENNEY: 6003, Title 18.

MR. DIRENZO: The Court grants immunity? He will appear before the order is signed? Usually when the order is signed it is in the general motion part.

MR. KENNEY: No, we see no reason for that. It is made to the Court.

THE COURT: I would like to have a copy of the papers to read during the luncheon recess.

MR. KENNEY: The defense claims whether or not this man should be granted immunity would be relevant.

THE COURT: Let's worry about that when we are ready to argue the question.

MR. DIRENZO: We would argue the question of standing that we would have.

(Continued on page 47.)



(In open court; jury present.)

THE COURT: You may proceed, Mr. Kenney.

MR. KENNEY: The government calls Crawford Lawrence.

CRAWFORD LAWRENCE, called as a witness by the government, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. KENNEY:

Q Mr. Lawrence, would you tell us what your occupation is, please?

A I'm a U. S. Postal driver.

Q And when did you first become employed by the Post Office?

A November '71.

Q Could you speak up just a little bit.

Did you say November 1971?

A November 1971.

Q And what did you do for the post office at that time?

A Well, I was a floater driver, you know, picking up runs for which absentees didn't show for the day.

THE COURT: Mr. Lawrence, I have to ask you to keep your voice up so the last juror in the last row can



1 gtd Lawrence-direct

2 hear you. You are talking quite low and all the jurors  
3 have to hear your testimony.

4 Thank you.

5 Q Will you tell us what your actual job was?  
6 What did you do when you were working?

7 A Just a driver.

8 Q What would you drive?

9 A Five ton truck.

10 Q Where did you go to work? Where were you  
11 stationed to start driving these trucks?

12 A 34th Street garage.

13 Q And directing your attention to April 5th, 1973,  
14 were you on duty on that day?

15 A Yes, I was.

16 Q And where did you go on the morning of April 5th,  
17 1973?

18 A Well, I reported to the 34th Street garage and  
19 waited until I was dispatched for this here run 135 on 1.

20 Q You waited until you were dispatched on 135 on  
21 1?

22 A Yes.

23 Q Could you tell us what 135 on 1 is?

24 A It's a trip going down from GPO to Church  
25 Street.

1 Q Is 135 on 1 the route of that trip?

2 A Excuse me?

3 Q 135 on 1, does that represent the route on  
4 which that truck goes?  
5

6 A Yes, it does.

7 Q Was that a regular route at that time? Did  
8 you drive that every day?

9 A I didn't drive it every day, but it was a  
10 regular route.

11 Q And what were your duties with regard to that  
12 route? What we are trying to find out here is, were you  
13 assigned to drive that route every day?

14 A No, I wasn't.

15 Q And how did you come to drive that route on  
16 April 5th, 1973?

17 A Well, the person that was assigned to that  
18 route was out sick and by me being a floater I covered for  
19 him.

20 Q Could you tell us when you left the 34th Street  
21 garage that day in the mail truck, where did you go?

22 A I went to GPO on 33rd Street and Ninth Avenue.

23 Q Will you tell us what time of day that was?

24 A It must have been about 11:20 in the morning.

25 Q And what did you do between the time you

1 arrived at the General Post Office and your lunch break?

2 A Well, is this referring to the morning, at the  
3 time I arrived, you know, in the morning, at the post office  
4 until my lunch break, because during that time I had to  
5 make a trip downtown and back.  
6

7 Q That's right. Will you tell us where you went  
8 from the General Post Office?

9 A Well, I went to Church Street Station, then I  
10 had to go to Peck Slip Station, Federal Reserve, Wall  
11 Street, I had to hit the same stations going back, Peck  
12 Slip, bypass Fed, Church and GPO.

13 Q And the General Post Office is on 33rd Street,  
14 is that right?

15 A Right.

16 Q And Eighth Avenue?

17 A Right.

18 Q And when you got back to the General Post  
19 Office, did you have a luncheon break?

20 A Yes, I did.

21 Q During that trip, was there anyone in the truck  
22 with you?

23 A On my second half you are talking about of this  
24 trip?

25 Q Before lunch, before you had your luncheon

break.

A I had a driver going down, I think. I'm not sure.

Q You had a driver going down?

A Not a driver, a convoy going down.

Q Would you explain to us what a convoy is?

A Well, he secure all the reg. mail and he tells me what route to take and everything.

Q When you say he secures the reg. mail, are you referring to registered mail?

A Yes.

Q And what do you mean when you say he secures the registered mail?

A He checks the locks, checks the serial numbers, makes sure the bags have no rips or tears in it and make sure they get off at the proper station and, you know, dispatched to the proper foreman or supervisor, whoever is in charge.

Q After the luncheon break, will you tell us what you did on April 5th, 1973?

A Well, I reload my truck taking my second half of the trip going down toward Wall Street. After I loaded up, I resumed to Church Street, unloaded and reloaded, I went to Peck Slip, unloaded and reloaded --



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Q Would you stop there for just a moment?

Was anyone on that trip with you?

A No, there wasn't.

Q What did you do after you arrived at Pack Slip Station?

A Well, I continued on to Wall Street Station, where I unload and reload and I picked up my convoy.

Q Who was your convoy at that time, as you recall?

A William Hickey.

QA And after you picked up Mr. Hickey at the Wall Street Station, where did you go?

A Well, we went to Federal Reserve and Maiden Lane and William Street.

Q What did you do at the Federal Reserve Bank?

A Well, we loaded up reg. mail going back up to GPO.

(Continued on page 53.)



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Q     And when you left the Federal Reserve Bank,  
where did you go?

A     I was en route Peck Slip station.

Q     What did you do at the Peck Slip station?

A     We picked up their registered mail and unload  
previous mail we got from Wall Street.

Q     Would you tell us, to the best of your recol-  
lection what happened after you left the Peck Slip station?

A     Well, we was coming up Pearl Street onto Gold  
Street and as we was getting into Gold Street, by the  
supermarket, on the side was a vehicle, a panel truck  
in front of us. It was going rather slow but it wasn't  
stopped, and as it entered Beekman Street I was behind  
about three car-lengths and as it got to Beekman and  
William it came to a sudden stop, and that's when I heard  
a shot and seen this fellow on the left-hand side of me  
with a revolver in my face.

Q     What did you do, or what happened after you saw  
the fellow next to you and heard the shot?

A     Well, as soon as I heard the shot, I turned to  
my right. I seen the fellow in the window, and then that's  
when my side of the door opened up and a fellow told me,  
"Get out."

As I was getting out, I was walking toward this

other panel truck that stopped sudden right in front of me, and he grabbed for the door and he told me, "Get in this truck."

As he grabbed me and the door slammed open and hit the wall and getting ready to close again, he reached again and that's when I started running down William Street.

Q And after you started running down William Street, did anything else happen?

A Several shots were fired at me.

Q Did you do anything or notice anything as you were running down William Street and you heard the shots being fired?

A Really, no, sir. I just ran in a slight zigzag, you know, for which I learned in the service, you know, a pattern of running when you're under fire.

MR. DIRENZO: I didn't hear that answer, your Honor.

THE COURT: Read it back.

A I was running down William Street in a zigzag pattern for which I learned when I was in the service when someone is firing at you.

Q Going back to the time that the truck stopped abruptly, prior to that time, did you have a conversation

with Mr. Hickey?

A Yes. We was talking about things.

Q After the truck stopped abruptly, how much time passed before you heard the shot?

A Seconds. It happened like -- it happened so fast, I --

Q And when you heard the shot, did you feel anything?

A I felt a sting in my neck and that's when I turned to the right.

Q And what was that sting on your neck, if you know?

A They said the bullet grazed me in the neck.

Q Did you subsequently have that wound treated?

A Yes, I did.

Q When was that?

A The same day, about half an hour later, at Beakman Hospital.

Q You said that you then, after the shot was fired, looked at Mr. Hickey?

A Right.

Q How did Mr. Hickey appear to you at that time?

A He was just sitting straight up, no moan, no nothing. I didn't notice any blood or anything.

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2 Q And which way was he looking, or which way did  
3 he appear to be looking?

4 A He was looking forward, straight.

5 Q You said that you were driving a 5-ton postal  
6 truck, I believe; is that right?

7 A Right.

8 Q Is that the type truck which you drive all the  
9 time?

10 A Sometimes a 2-1/2 ton, but majority of the time  
11 a 5-ton truck.

12 Q Would you describe for the jury how much space  
13 there is in a cab of a 5-ton truck?

14 A It's about --

15 MR. DIRENZO: That is objected to unless he  
16 describes this particular truck, your Honor.

17 THE COURT: Sustained.

18 Q Yes. Would you describe this particular truck  
19 on April 5 1973, please?

20 A Between two persons in the passengers' area,  
21 it's only about a foot apart. Less than that, maybe.

22 Q Between the time that the mail truck stopped  
23 abruptly and the time you heard the shot, did Mr. Hickey  
24 move, if you know?

25 MR. MARTIN: Your Honor, I am going to object



to that question. I don't think there was any question that the mail truck stopped abruptly.

THE COURT: Overruled.

MR. KENNEY: Would you read the question back, Mr. Reporter?

(Record read.)

A He did not.

Q Directing your attention to the period of time when you were running down William Street and the shots were being fired, were you hit or did you feel anything as you were running down William Street?

A Well, I felt a bullet going through my jacket lining, and I seen it, you know, the cotton coming out.

Q I'm sorry. Would you describe what you saw?

A Cotton coming out of this here jacket lining I had on at the time. It was like tissue paper as the bullet went through.

Q I show you what has been marked Government's Exhibit 1 for identification, and I ask if you can identify that.

A Yes. This is my jacket lining I had on that day.

Q And is that jacket lining in any different condition after you ran down William Street than it was before you got out of the mail truck?



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2 A Except for the holes, yes.

3 Q And would you show us which holes were not  
4 there when you got into the mail truck?

5 A These two here and one on the neck (indicating).

6 Q Directing your attention to that piece of  
7 cotton which is shown by the collar of Government's  
8 Exhibit No. 1, would you take a look at that?

9 . If you had that jacket on right now, where would  
10 that tear in the material be with relation to the wound  
11 on your neck?

12 A Right here (indicating).

13 Q It would be approximately in the same place,  
14 is that right?

15 A Yes.

16 MR. KENNEY: Your Honor, could we have this  
17 chart marked Government's Exhibit No. 2 for identification.

18 (Government's Exhibit No. 2 marked for iden-  
19 tification.)

20 MR. KENNEY: Your Honor, may the witness  
21 approach Government's Exhibit No. 2 for identification?

22 THE COURT: He may.

23 MR. DIRENZO: I recognize, your Honor, that  
24 this is an exhibit marked for identification only.

25 Can I make inquiry of the United States Attorney

through the Court as to whether this is a scaled map or chart?

THE COURT: Mr. Kenney?

MR. KENNEY: The answer is yes. This is a map, blow up of a map which we received from the New York City Planning Division drawn to scale.

MR. DIRENZO: My next inquiry is, may we know what the scale is?

MR. KENNEY: I would be glad to supply that, but I don't have the information now.

MR. DIRENZO: All right, thank you.

THE COURT: You may go over to the map.

Q Mr. Lawrence, would you point out for the Court and jury the route you would follow as you went to the Federal Reserve Bank that afternoon just prior to your second trip to the Peck Slip station?

MR. DIRENZO: I only object to the question on the ground that he uses the word, "would." If he changed it to the route actually taken --

THE COURT: Would you point out to the jury the route you took that afternoon, please, Mr. Lawrence?

You mean the whole route or just from Peck Slip, Mr. Kenney?

MR. KENNEY: From the Federal Reserve Bank to

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2 Peck Slip station and then I would like to have the witness  
3 point out the route he took from the Peck Slip station  
4 insofar as it appears from this map.

5 Q Can you point out the Federal Reserve Bank?

6 A It's right here (indicating).

7 Q Would you put an X with this magic marker as  
8 to where you believe the entrance to the mail truck at  
9 the Federal Reserve Bank would be?

10 A (Witness complies.)

11 Q Is that entrance on Maiden Lane?

12 A Yes, it is.

13 Q After you leave the Federal Reserve Bank, would  
14 you show us then how you approach the Peck Slip station?

15 Perhaps you'd better show us where the entrance  
16 to the Peck Slip station is next and mark that with an X.

17 A (Witness complies.)

18 Q Would you show us how you approach the Peck Slip  
19 station with your mail truck? Which street do you come up?

20 A I would go up Maiden Lane and then Nassau,  
21 come down Maiden Lane to Pearl Street, take Pearl Street  
22 all the way to Peck Slip, on Water Street, make a left  
23 into the rear entrance of the Peck Slip station  
24 (indicating).

25 Q Would you show us the route you would take from

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Peck Slip station to your next stop, the route you did, in fact, take on that day?

A I would come back out on Water Street, off Peck Slip Street, down Pearl Street, bear to the right and take it --- this is Pearl Street, take Fulton Street onto Gold Street. Gold Street to Beekman, Beekman Street straight across the park to Church Street Station.

Q Would you point out on the map with a red X the point where you recall you stopped the mail truck?

MR. DIRENZO: Might I suggest, if your Honor please, we are going to wind up with three X's, and for the clarity in the record, I think the first X should be marked 1, the second 2, this one 2, so that the record will show where it is on the chart.

THE COURT: Put a 1 next to the Federal Reserve on Maiden Lane, please, Mr. Lawrence; put a 2 next to Peck Slip Station, and now you have been asked to put an X where you stopped your mail truck.

(Witness complies.)

THE COURT: You put a 3?

THE WITNESS: That is the point.

THE COURT: He put a 3 where he stopped his mail truck, Mr. Kenney.

Q Would you show us where you ran after you got



1           getch 10                   Lawrence-direct

2           out of the mail truck?

3           A       I ran right down William Street to Federal  
4           Reserve.

5                   MR. KENNEY: I would ask the witness, your  
6           Honor, just to draw a line on the route of the mail truck  
7           down to where he ran. It won't take long.

8                   THE COURT: All right.

9           A       This point here?

10                  THE COURT: He wants you to start with your 2X  
11           at Peck Slip.

12                   Is that right?

13                  MR. KENNEY: That's right.

14                  THE COURT: Draw a line indicating your route  
15           from there to the place where you stopped the mail truck.

16                   (Witness complies.)

17                  THE COURT: Now, do you want him to give a dotted  
18           line to show the area in which he ran, a broken line?

19                  MR. KENNEY: Yes.

20                  THE COURT: A broken line, Mr. Lawrence, from  
21           the point where you ran to where you stopped running.

22                   (Witness complies.)

23                  THE COURT: Do you want Mr. Lawrence to come  
24           back or do you want to continue to interrogate him at  
25           the chart?



Q Mr. Lawrence, you may return to the witness stand, if you would.

Mr. Lawrence, after the shot was fired and you looked over toward Mr. Hickey, did you see anything or anyone else besides Mr. Hickey?

A Well, I seen another person standing up in the window, you know, over the window, with a revolver in his hand. That's about all.

Q With a revolver --

THE COURT: On the right-hand side?

THE WITNESS: On the right-hand side.

Q And was that person black or white?

A Black.

Q Did the man who helped you out of the mail truck on your side, did he have anything in his hand?

A He had a revolver in his hand.

Q Was he black or white?

A Black.

Q Can you tell us if the map as you have marked it accurately reflects the street pattern of that mail truck route?

A Yes, it does.

MR. KENNEY: Your Honor, we offer in evidence Government's Exhibits 1 and 2.

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We have no further questions of this witness.

THE COURT: Any objections?

MR. DIRENZO: I have no objection.

I would think, though, that Mr. Kenney would want to mark William Street there because there is no name on that particular chart.

THE COURT: There is no name on it.

MR. KENNEY: If there is no objection, I will mark William Street on the map.

MR. DIRENZO: Just so we can have it for the sake of clarity.

MR. HAFETZ: No objection.

THE COURT: Any objection, Mr. Martin?

MR. HOPPER: I have no objection, but I wonder if Mr. Lawrence could give us some directions as to the streets. I can hold that for cross-examination.

THE COURT: As to one-way?

MR. HOPPER: As to which way the traffic runs.

THE COURT: Why don't you hold that for your cross-examination.

Any objection?

MR. HAFETZ: No objection.

THE COURT: It is admitted.

(Government's Exhibits Nos. 1 and 2, respectively)

were received in evidence.)

MR. KENNEY: Your Honor, for purposes of clarity, I would like to simply mark the map which has not been marked with north, south, east and west directions. I just do that --

THE COURT: Any objection to that?

MR. DIRENZO: It is all right with me.

MR. MARTIN: No objection.

THE COURT: Use Broadway, which is not written as your area, Broadway and Park Row, in that area, as to north, south, east and west.

(Mr. Kenney complies.)

THE COURT: All right, you may cross-examine, Mr. Direnzo.

CROSS-EXAMINATION

BY MR. DIRENZO:

Q Mr. Lawrence, before the date of this occurrence, did you know anyone by the name of Crawford that was an employee at the post office?

A No.

Q Inviting your attention to the date in question, did you know what the contents on that particular truck was going to be for that particular route, to wit, 13501?

THE COURT: You mean the second run after lunch?

MR. DIRENZO: That is correct.

THE COURT: You are not interested in the first one?

Q It is a fact, is it not, that the contents that was on the truck at the time of the particular incident was the registry assigned to 13501? Is that correct?

A I really -- I can't answer that because that run is -- it varies, so I don't know. I really don't know.

Q So your answer is you don't know?

A I really don't know.

MR. KENNEY: Your Honor, I object to 13501. I don't believe there is any prior testimony.

THE COURT: You've got the number wrong, Mr. Dizenzo.

It is 13501.

MR. DIRENZO: 13501 -4 --

MR. KENNEY: I don't believe that is the testimony.

THE COURT: Yes, it is. It is the route number.

MR. KENNEY: Could the witness be asked what the route number is?

I think he might have been misunderstood.

THE COURT: Mr. Lawrence, on direct examination



1 didn't you tell us in answer to a question by Mr. Kenney  
2 that the run was known as 13501?

3 THE WITNESS: 135 on 1.

4 THE COURT: Oh, 135 on 1.

5 MR. DIRENZO: That clears it up, your Honor.

6 Q You said there was a vehicle or a van that  
7 had slowed down in front of the postal truck, the 5-ton  
8 truck that you were driving with Mr. Hickey in it?

9 A Yes.

10 Q And where do you say that particular van was  
11 with relation to your truck?

12 A Well, it was in -- it was in front of me, but,  
13 like --

14 Q Would you keep your voice up, please, sir?

15 A It was in front of me, but as we was going  
16 up Beekman Street it was dropping car-lengths, like;  
17 it was three car-lengths, then it became one car-length,  
18 and then it like stopped, made a sudden stop.

19 Q But there were no vehicles between your truck  
20 and that van; is that your testimony?

21 A Right.

22 Q Now, there came a time when you say your  
23 vehicle had to come to a halt because you were blocked  
24 by a van, correct?



A Right.

Q And at that particular point, someone approached the right side of the vehicle, the passenger's side of the vehicle, and someone approached your side of the vehicle?

A Yes.

Q And I think you described the men who approached the vehicle as you just testified as white -- as black males, is that correct?

A This is true.

Q Now, inviting your attention to the point where your vehicle came to a stop, how soon afterwards did anyone approach your vehicle?

A Seconds. Matter of seconds. It all happened like that, right, a matter of seconds.

Q When you say, "Like that," a snap of the fingers, so we have the record clear.

A Yes.

Q If you recall, at the point where these men approached your vehicle or got on your vehicle, do you recall whether Mr. Hickey's window was open on the right side?

A It was partially, not all the way. About six inches from the top.

Q Now, the man who approached the right side of the vehicle, if you know, did he stand on the running board of the right side of that vehicle?

A Well, I couldn't answer that because I don't know how tall was the guy or whatever. If he was a tall person he didn't have to stand on the running board, but if he wasn't, he have to in order to, you know, look through the window.

Q Incidentally, after this incident, did you see that man that approached on the right side running away or doing something?

A The man on the right side?

Q Yes, sir.

A No, I just seen him in the window with the revolver, that's about all.

Q I didn't hear you, sir.

A I said I just seen him in the window with the revolver, that's about all.

Q So you couldn't tell us that you saw him at any time afterwards to determine how tall or how heavy he was; is that correct?

A No.

Q It is a fact, is it not, Mr. Lawrence, that you were interviewed by postal inspectors after this occurrence?

1  
2 A Yes.

3 Q And did you give a description of each of the  
4 participants as you saw them that day?

5 A Only one I could say I gave a description of.

6 Q Did you describe one as a male Negro 27 or 28  
7 years of age?

8 A As far as facial, yeah.

9 Q And did you state that he was about 5, 10,  
10 and of husky build?

11 A No. The only description I gave was the one  
12 that pulled the gun on me; that's about it.

13 Q Well, on April 5, 1973, at Beekman Hospital,  
14 you spoke to Dominick Scarcella, a detective from the  
15 homicide bureau; correct?

16 A I wouldn't know. I spoke to so many people that  
17 day.

18 Q And is it your testimony that you did not tell  
19 him there was a man about 27 or 28 years of age, 5 foot 10,  
20 husky build, long sideburns, was wearing a red-black  
21 knit hat and a brown -- and a coat and brown pants?

22 A On Suspect No. 1, I described him, but No. 2,  
23 I could not describe him.

24 Q Did you say the other one was in his twenties,  
25 about 5 foot 6, medium build, red jacket and sunglasses?

Did you tell Detective Scarcella that you saw a gun and it was a silver gun and a brown handle and it was 32-caliber?

A I told him I seen a silver gun with a brown handle, but I didn't say -- I didn't know what caliber it was. I just described the gun.

Q I am just testing your recollection, Mr. Lawrence. When you say you saw a brown handle, was there a time when the gun dropped?

A Excuse me?

No. He had it in his right hand with the handle facing upwards, like on the side.

Q What gun was that? Was that the gun that was facing Hickey or the gun facing you?

A The gun that was on me.

Q Now, was there any kind of an utterance by the man who approached the vehicle on the right side to Mr. Hickey or to you, if you can recall?

A No, I don't -- no.

Q Will you say that there was not a spoken word?

A No, not to me or Mr. Hickey.

Q Is it fair to assume that at the moment that the perpetrator approached the right side of that vehicle he immediately fired a shot into the head of Mr. Hickey?



1  
2 A I won't -- I can't answer that because I  
3 wouldn't know exactly, but I know -- the only thing I can  
4 say, it happened simultaneous, like, the shot and I  
5 felt the neck and I turned around.

6 Q And that happened at the moment when that man  
7 jumped on that -- put the gun through the portion of the  
8 open window, right?

9 A I couldn't answer that because I -- I didn't  
10 see him until I felt the neck wound, so I -- I really  
11 don't know.  
12  
13  
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1  
2 Q And your best recollection now is that there  
3 was absolutely no talk at all before the shot was fired?

4 A No.

5 Q On the right side? At the point that you felt  
6 the sting which was a shot that hit you in the back of the  
7 neck --

8 A Right.

9 Q -- Mr. Hickey was quite close to you?

10 A Yes.

11 Q And you know now, do you not, that the bullet  
12 that penetrated Mr. Hickey's skull and brain was the same  
13 bullet that struck you?

14 A Yes.

15 Q In other words, it went right through his head,  
16 his brain, and hit you?

17 A Yes, sir.

18 Q Now, there came a time when you were ordered out  
19 of the truck?

20 A Yes, there was.

21 Q Was Hickey ever ordered out of that truck?

22 A No.

23 Q Do you know whether Hickey's door was open or  
24 closed?

25 A It was closed, as far as I observed, at the time.

1 mmd2  
2 Q You say it was closed?

3 A Yes.

4 Q Can you say that it was locked?

5 A I can't say it was locked.

6 Q But, in any event, the window on that right side  
7 was open or partially open?

8 A Right.

9 Q Was your door locked?

10 A Well, I can't say that, either.

11 Q Do you recall how the door on your side of the  
12 truck was opened by the perpetrator that approached you on  
13 your side?

14 A He just grabbed the handle and pushed it open.  
15 I'm not sure, because he told me, "Get out," and -- I don't  
16 know.

17 Q He told you to get out?

18 A And at the same time he had his hand on the  
19 door.

20 Q He had his hand on the door, the outside handle?  
21 Is that correct?

22 A Right.

23 Q And that is the way the door was opened?

24 A Yes.

25 Q So is it reasonable to state that the door on

1 your side was not locked?

2 A Well, sir, those doors on all those trucks,  
3 half of them do not lock, so you can lock it and think it  
4 is locked, but you never know.  
5

6 Q Now, tell me, Mr. Lawrence, at the point you  
7 received the command from a man who had a gun in his hand  
8 and he told you to get out of the truck, did you get out  
9 right away?

10 A Yes, I got out.

11 Q You obeyed that command?

12 A Yes.

13 Q Between the command and the time that Hickey  
14 had been shot and you were shot, grazed -- call it that --  
15 how much time elapsed? I can't pin you down to the exact  
16 time.

17 A I wouldn't know.

18 Q Would it be fair to state that it happened very,  
19 very fast? Rapidly?

20 A Yes, in a sense it was fast.

21 Q Now, recognizing that you were obeying a command  
22 and the man pointing a pistol at you, how much time elapsed,  
23 if you can tell us, between the time that he ordered you,  
24 commanded you, and you started to run in the manner you told  
25 us down William Street, as evidenced by the broken line?

A I will say almost three minutes, maybe more. I don't know.

Q And from the moment you started to run, shots were being fired at you? Right?

A Yes.

Q How many gunshot reports did you hear?

A How many gunshot reports I heard?

Q Yes, as you were running.

A I don't understand your question.

THE COURT: How many shots were fired?

THE WITNESS: I heard about three. I seen two go through my jacket.

Q Now, incidentally, when you were treated at the hospital, can you tell us, if you know, from what you were told, that there were any powder burns on your neck?

A I don't remember being told or even hearing anything like that.

Q I see an opening on the right side of this wind-breaker and I see a second opening a little bit higher, closer to the zipper line. Are these the two holes?

A Yes, they are.

Q And you say they were the result of shots that were fired at you? Correct, sir?

A Yes.



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Q One went right through the jacket?

A Yes.

Q The jacket was open?

A It was flying open.

Q The second one likewise went through? Correct?

A Yes.

Q Fortunately, these did not strike?

A No.

Q How far were you from the man firing that gun when the shots were fired at you?

A I was not too far, no further -- I don't know the exact distance, but it couldn't be any further from here to that stand (indicating).

Q About 20, 25 feet?

A More than that.

Q 30 feet?

A I don't know exactly, because I didn't turn around, but I know as soon as I got away from him the shots started, he started firing.

Q At what point were you, indicating on that dotted line on the chart, Plaintiff's Exhibit 2 marked for identification, when you heard the last shot fired?

A I wouldn't know, sir. I wasn't paying any attention.



1 Q That is understandable. Will you tell us where  
2 you were, if you can, when the shot was fired?

3 A I was closer to the corner of William and  
4 Beekman.  
5

6 THE COURT: Could we do it this way: were you  
7 on Beekman or had you already turned the corner into  
8 William?

9 THE WITNESS: I was into William, because  
10 William intersects into Beekman, and I more or less started  
11 running straight down William Street, so I would say I was  
12 a quarter of a block.

13 THE COURT: You were already into William Street?

14 THE WITNESS: Yes.

15 Q So when you started to run, you started to run  
16 from Beekman and William down William?

17 A Straight down William Street, right.

18 Q Now, you said -- and I'm not asking you for the  
19 conversation -- there was a time when you were talking to  
20 Mr. Hickey while he was in the cab of the truck with you?  
21 Is that correct?

22 A Yes.

23 Q Is that before the incident?

24 A Yes, it was.

25 Q Did he say anything after the shot was fired?

1 A Excuse me?

2 Q Did you hear him say anything after the shot  
3 was fired, without telling us what it was?  
4

5 A No, I didn't.

6 Q Do you know whether the man on the right side  
7 attempted to take Mr. Hickey out of the driver's seat --  
8 out of the passenger's seat -- I'm sorry.

9 A I wouldn't know that. I don't know.

10 Q But at the point where you last saw  
11 Mr. Hickey, he was sitting straight up? Is that correct?

12 A Yes.

13 Q Right close to you? Correct?

14 A Yes.

15 Q Incidentally, while you were driving this  
16 vehicle, did you ever notice any vehicles behind your  
17 vehicle?

18 A It was this car -- just cars.

19 Q You saw automobiles?

20 A Yes.

21 Q Did you ever see Mr. Carroll?

22 A No.

23 Q Did you state that the man who was on the right  
24 side of the vehicle, the perpetrator, was pointing a large  
25 gun in the window of the passenger side of the vehicle?

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1 A Yes, he was.

2 Q Now, having been in the service, I take it that  
3 you are somewhat familiar with guns, hand guns?

4 A Not that familiarized with hand guns.

5 Q When you say it was a large gun, would you  
6 attempt to describe it, if you could?

7 A Yes, it was about the size -- I guess it's a  
8 .38 -- about that big (indicating).

9 Q A .38?

10 A Yes.

11 Q A long barrel?

12 A A long barrel.

13 Q Then you said you were taken out of the truck?  
14 You stepped out towards the gree van?

15 A Excuse me?

16 Q Did you step toward the green van?

17 A I was ordered to the green van, yes.

18 Q You didn't see any occupants in that vehicle,  
19 either?

20 A No, I didn't.

21 MR. DIRENZO: I have no further questions, your  
22 Honor.

23 THE COURT: Mr. Martin.

24 (Continued on page 81.)  
25

## CROSS-EXAMINATION

BY MR. MARTIN:

Q Mr. Lawrence, this was a special assignment for you that day to drive this route and truck?

A No, it was not a special assignment. I was just filling in.

Q You were filling in for the regular man, though?

A Yes.

Q Did the regular man happen to take off that day?

A I don't know.

Q Do you know who the regular man was?

A I didn't know the regular man.

Q Do you know the reason why he had taken off that day?

A No.

Q Did anybody in the Post Office tell you who that regular man was?

A No, but I have seen him before.

Q After this experience that you recounted to Mr. Dorenzo, did you subsequently write any reports? Did any of the people ask you to write up statements?

A Referring to this incident here?



Q Yes.

A No, I don't think I had to write up any statement.

Q Did anybody from the Post Office ask you to make out a report or to write anything out?

A No, as far as I recollect, no.

Q Did anybody from the Police Department ever ask you to write out a report or to sign any statements?

A No.

THE COURT: Your original question is, did he write out any; now you ask, did he sign any. Make it clear so the witness understands it, Mr. Martin.

You didn't write any reports out?

THE WITNESS: No.

THE COURT: Did you sign any reports that were given to you to sign as to what happened that day?

THE WITNESS: I don't remember.

THE COURT: He doesn't remember any.

Q Were you interviewed by many people that day after this incident?

A Yes, I was.

Q Did you speak to Post Office inspectors?

A Yes, I did.

Q Do you know who they were?



2 A No.

3 Q Did you speak to police officials after this?

4 A Yes.

5 Q Do you know who they were?

6 A No.

7 Q At any time did anyone ask you to make a  
8 recording of what happened or to speak into tape about what  
9 happened?

10 A No.

11 Q Did you, in fact, ever speak into a tape about  
12 what happened?

13 A No, I didn't.

14 Q Did you ever write any letters to anybody about  
15 this incident?

16 A No.

17 Q When this happened, I believe it was about 6:30  
18 or 6:00? Is that your recollection of the time?

19 A Right.

20 Q Can you tell us the condition of the area? Were  
21 there a lot of people? A lot of traffic? Did you look at  
22 that at all?

23 A Well, there were very few people and the  
24 traffic was very little. That is about it. Everything  
25 was about ready to close. I was surprised, because nobody

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1 was walking down Beekman Street. It was deserted, more or  
2 less.  
3

4 Q You say there was nobody there at that time?

5 A There were people there, but the area usually  
6 is very crowded and congested.

7 Q Did you observe any people in the area?

8 A Yes, I did.

9 Q Can you approximate how many were around?

10 A At the time I only seen about three or four  
11 people in the area.

12 Q Can you tell me where they were in this area?

13 A Well, I seen one lady. She was right on the  
14 corner when the incident happened, like, you know, vertical  
15 to the truck, like I said, right on the corner.

16 Q Would that have been at the corner of Beekman  
17 and William?

18 A Yes.

19 Q You yourself had not an opportunity to find out  
20 that lady's name?

21 A No.

22 Q Do you know if there was anybody else? Was  
23 anybody else around that you could remember?

24 A There were others, but I can't recognize them.

25 Q Could you tell me where they were with regard

to that intersection?

A Coming down Beekman and near the corner of William, and a few -- I don't know -- on the right side -- but I know there were a couple coming down Beekman, coming toward Beekman Street on the left hand side.

Q As you remember, were they men or women?

A No, I don't remember.

Q And you never subsequently found out who they were?

A No, I didn't.

Q Now, the weather on that day was relatively warm? Could you describe it?

A It was pretty warm for that day.

Q And the light conditions, would you say it was light or dark or in between?

A It was fairly light.

Q Well, enough to see the surrounding area?

A Yes.

Q Did you notice anything unusual? Was there anything unusual about that intersection?

A No.

Q Just normally the way it would be when you passed it at other times?

A Yes.

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Q Did you observe any parked cars along Beekman Street as you came up toward William?

A Yes, there were quite a few.

Q Would they be parked on the right?

THE COURT: When you say "right," I think you better use north or south side of Beekman Street.

Q In relation as you were driving, to the right of you were there cars parked?

A There were vehicles on the right.

Q Now, to the left of you as you came along Beekman Street, were there cars parked?

A A few.

Q Were there cars parked as far as you could see on Beekman Street past the intersection where William Street comes in?

A I really don't know.

Q Do you know what, if any, controls were at that intersection?

A Excuse me?

Q Do you know what, if any, controls there were or signals?

A The only thing that was there -- no.

Q Now, the route that you described before when you came from the Peck Street Station to Beekman Street,



going up to Beekman Street, had you, in fact, ever driven that route before?

A Yes, I have.

Q And in driving that route are there any written instructions given to you by the Post Office as to which streets to take?

A Not to me, but to the convoy in charge. He has written orders which streets to take.

THE COURT: In other words, he tells you how to drive the route?

THE WITNESS: Right.

Q Do you know whether or not the route that you were driving that day is always used in the same fashion?

A As far as I know of, yes, but that is my knowledge.

Q You actually wouldn't know?

A I wouldn't know.

Q So that others might conceivably to get from Peck Slip, the Peck Slip Station to where you were going at the time of this incident, other Post Office vehicles might use other routes?

A If permitted, yes.

Q Do you think the regular man who was on duty that day would know that route and the way --



1  
2 MR. KENNEY: Objection.

3 THE COURT: Sustained.

4 Q You never met or saw the defendant Vincent  
5 McCloskey?

6 A No, I have not.

7 Q Now, Mr. Lawrence, during this horrible incident  
8 you had did you at any time see either of these men who you  
9 described actually pull the trigger?

10 A No.

11 Q You say when your vehicle stopped simultaneously  
12 you heard a shot?

13 A Yes.

14 Q Now you heard a noise that you assumed was a  
15 shot?

16 A I heard a shot.

17 Q You heard a shot?

18 A I heard a shot.

19 Q Had you ever heard a pistol shot before?

20 A Yes, I have.

21 Q Where had you heard it before?

22 A In the service.

23 Q HAD you ever heard one inside an enclosure like  
24 a truck?

25 A Yes, I have.

Q Where had you heard that before?

A In the service.

Q Was someone actually shot through a truck?

A We were shooting our pistols ourselves.

Q From inside the truck?

A Yes.

Q So that the first recollection or remembrance you had was that you heard this noise and that you felt something in your neck?

A Right.

Q Now, did you feel which way it came from?

A Well, I felt it from the right side, but exactly which way, no, I can't tell you that.

Q It was more a sensation?

A Yes.

Q Actually a bullet travelling?

A Yes.

Q You heard a noise, then you felt something in your neck?

A Right.

Q Was there any bleeding from your neck?

A Yes, there was.

Q Did you receive any medical attention for that?

A Yes, I did.

1  
2 Q Where did you receive the medical attention?

3 A At Beekman Street.

4 Q When you went to Beekman Street Hospital did  
5 you tell these people what happened?

6 A Well, at that time the Postal Inspectors were  
7 down there and the doctors just took care of me.

8 Q Did the doctor ask you what happened?

9 A No, because the Postal Inspectors talked to the  
10 doctors and informed them about the incident, plus prior,  
11 the doctors went and took Hickey out of the truck and  
12 apparently they knew what had happened.

13 Q And were these Postal Inspectors the ones who  
14 took you to the hospital?

15 A No, it was regular patrolmen.

16 Q That would be policemen?

17 A Yes.

18 Q You don't remember their names?

19 A No, I don't.

20 Q Did they meet you down in this vicinity where  
21 the incident happened?

22 A The policemen, no, they picked me up at the  
23 Federal Reserve.

24 Q I think you told Mr. Kenney and Mr. Direnso  
25 before that there came a time when one of these men ordered

you to go down from the truck and to go into the van?

A Yes.

Q Did there come a time when you got down from the truck? You got out of the truck?

A I got out of the truck.

Q Did you then walk over toward the van with this man?

A Yes, I did.

Q Now, during that period of time did you have occasion or the opportunity of walking and seeing what this man looked like?

A I don't understand.

Q Could you tell us what he looked like?

A The one that was escorting me?

Q From the mail truck to the van.

A Yes, he was husky, he must have been about 5'8", 5'9"; it looked like he weighed almost 200 pounds, 200 and better. He had a black leather jacket on, black, red and green wool hat, and he had little round eyes, smooth complexion, fairly light.

Q You say he was about 5'8", 5'9"?

A At the time he looked 5'8", 5'9", maybe taller than that. Really, I was shaken up; I was not thinking.

Q How about the other man? Did you have occasion

1 to see him at all?

2 A I just seen his face, and that is it.

3 Q Could you describe it as best you can?

4 A No, I can't describe it. He had sunglasses on,  
5 so I can't give you a description of him.

6 Q This other man, did you ever see him standing  
7 up in a position to ascertain his height?

8 A No, I didn't.

9 Q At the time that this man was escorting you to  
10 the van was any other individual nearby, near the two of  
11 you?

12 A The only close-up person I seen nearby was the  
13 lady that was standing on the corner. That is the only  
14 person.

15 Q When you say you got into the van or you went  
16 toward the van, did this man open the door or attempt to  
17 open the door?

18 A He reached out for the door handle and he  
19 slammed the door open, and the door hit the back of the van  
20 and was beginning to close again, and the only time he  
21 reached for it again, that is when I ran.

22 Q This door was in the back or the side of the  
23 vehicle?

24 A It was in the back.



1                   Q     Could you remember or are you able to describe  
2                   the size of this particular van?  
3

4                   A     It was a good-sized panel truck, pretty good  
5                   size.

6                   Q     More like --

7                   A     More like an International, about the size of  
8                   an International truck; they are not very large, but they  
9                   are large enough to carry a couple of pieces of furniture  
10                  and stuff like that.

11                  Q     Like an International truck?

12                  A     Right.

13                  Q     At that point you say he opened the door then  
14                  the door slammed back?

15                  A     Slammed back.

16                  Q     And then at that point you took off?

17                  A     Right, as he grabbed for it again.

18                  Q     Now at that time did you know where the other  
19                  man was? Did you have occasion to see him just before you  
20                  took off?

21                  A     No, I didn't.

22                  Q     So then you turned around and you ran down  
23                  William Street and you were zig-zagging?

24                  A     Right.

25                  Q     That would be like an infantry run?

1  
2 A Yes.

3 Q As you were running away from him you at no  
4 time looked back to see what was happening?

5 A No.

6 Q You were running and avoiding bullets?

7 A Yes.

8 Q You didn't see who, if anybody, shot the gun  
9 or pulled the trigger?

10 A No.

11 Q And you wouldn't know that?

12 A No, I wouldn't.

13 (Continued on page 95.)  
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1                   Q       At any time during your experience with this  
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3 man who came up and ordered you out of the truck and took  
4 you to the van, will you tell us what, if anything, you  
5 remember him saying to you between the time he ordered you  
6 out of the van and when you first saw him until you ran  
7 down William Street?

8                   A       He didn't say anything to me except, you know,  
9 "Get into the truck."

10                               He had the gun in my, you know, face and turned  
11 to me and, "Get into the truck," and that's all he said.

12                   Q       And that's all he ever said?

13                   A       That's all he ever said.

14                   Q       Did you at any time hear him say anything to  
15 the man who you say was on the other side of the truck?

16                   A       At that time, no.

17                   Q       Did you ever hear him say anything to anybody  
18 else while you were with him?

19                   A       No.

20                   Q       And that was the only conversation you heard  
21 him say?

22                   A       Right.

23                   Q       Did you have occasion to see any firemen at the  
24 scene of this incident when it happened?

25                   A       No, I didn't see any.

MR. MARTIN: Thank you, Mr. Lawrence.

THE COURT: Mr. Hafetz?

CROSS-EXAMINATION

BY MR. HAFETZ:

Q Mr. Lawrence, I represent Robert Rippy.

MR. HAFETZ: Will you stand up, Mr. Rippy?

Q Have you ever seen my client before?

A No, I haven't.

MR. HAFETZ: No further questions.

THE COURT: Mr. Hopper?

CROSS-EXAMINATION

BY MR. HOPPER:

Q Mr. Lawrence, in your testimony you have indicated a sequence of stops that you made on this trip. Would that sequence be described as 135 on 1 or is there a particular trip number connected with it?

A No. Well, block and run is 135 on 1 and each trip is a different trip number.

Q This last trip that you were on from beginning to end of that last trip, what was the sequence?

A I wouldn't know.

Q Where did that last trip originate?

A At GPO.

You mean -- originated from Wall Street to GPO.

It terminates at GPO.

Q The trip indicated by the red line, can you tell us approximately what time you left the Peck Slip Station?

A I don't know approximately, but it was around about 6:00, 6:10 or 6:05.

Q 6:05 or 6:10?

A Yes.

MR. KENNEY: Your Honor, could we find out whether that is a.m. or p.m.?

THE COURT: I assume it is p.m.

THE WITNESS: P.M.

Q And what time did you arrive at the Peck Slip Station to load and unload on that last trip?

A I wouldn't know, sir.

Q Can you recall approximately what the length of the loading and unloading time would be at Peck Slip?

A Not precisely, but it's about between 15 and 20 minutes.

Q Mr. Lawrence, then if you left Peck Slip between 6:05 and 6:10, you would have arrived at Peck Slip anywhere from, say, 5:30 or 5:40?

A Would you rephrase that? I don't understand that one.

Q Let me take it this way:



1 gtd4  
2 Prior to arriving at Peck Slip, you left Maiden  
3 Lane, the bank, is that correct?

4 A Federal REserve, right.

5 Q And prior to arriving at Maiden Lane, you were  
6 at Wall Street; is that correct?

7 A Yes.

8 Q Approximately what time did you leave Wall Street?

9 A I don't know that either, sir. I don't know,  
10 because we have-- at the end of that going down, you have  
11 a layover, like 10 or 15 minutes, so, you know, it's been a  
12 while. I really don't know.

13 Q Is the route for this particular trip -- withdrawn  
14 How many times have you taken this trip?

15 A In the past recent years I have been with the  
16 Post Office, I'd say I had about 15, 20 times.

17 Q And was the sequence always the same from Wall  
18 Street, Federal Reserve, Peck Slip and then on up Beekman  
19 Street as you went on this occasion?

20 A Most of the times, but it varies on the condition  
21 of the working around in that area, you know.

22 Q Except for construction, is that what you are  
23 referring to?

24 A Usually would be the same.

25 Q Pardon?

1 A It usually be the same.

2 Q You indicated that you don't recall exactly the  
3 times.  
4

5 Back on or about April 5th or April 6th, would  
6 you then have recalled the time, if you know?

7 A No, I don't think so.

8 MR. HOPPER: May I have a word with Mr. Kenney?

9 THE COURT: Yes.

10 (Pause.)

11 Q Mr. Lawrence, would it refresh your recollection  
12 or does this paper refresh your recollection as to the times  
13 of that last sequence --

14 THE COURT: On that day?

15 MR. HOPPER: On that day.

16 The paper that I am giving, your Honor, is one  
17 furnished to me by Mr. Kenney.

18 A Doesn't refresh my memory, but it's pretty close.  
19 That's all I can say.

20 Q Do you recall discussing those times with  
21 Mr. Kenney?

22 A Not the times, but the block and run.

23 Q Pardon?

24 A I recall discussing the block and run and the  
25 time of the incident, but the actual time of each station,  
no.

1 Q From that paper or any other source which may  
2 come to your mind, can you give us any approximation as to  
3 when you arrived at the Federal Reserve Bank on Maiden Lane  
4 on that day?

5 A No.

6 Q Can you give us any estimate as to how long you  
7 were at the bank at Maiden Lane prior to departing for Peck  
8 Slip?

9 A Well, I was there at least about ten minutes,  
10 ten or fifteen minutes.

11 Q How long travelling the route that you described  
12 on April 5th did it take you to get from the bank at Maiden  
13 Lane to Peck Slip?

14 A Maybe 15 minutes or more.

15 You see, what happens, you see, the traffic some-  
16 times is so heavy in that area you could run on schedule but  
17 it is very rarely and, like, some --

18 Q Didn't you say traffic was light?

19 A Coming from Peck Slip going to Church Street  
20 traffic was light, in that area. Now, going from Wall  
21 Street around to Maiden Lane it's different.

22 Q Or from Maiden Lane to Peck Slip it might be  
23 different. But are you saying that you specifically remember  
24 that on April 5th it took you 15 minutes to get from Maiden  
25

1  
2 Lane to Peck Slip?

3 A No, not -- it could have took about ten or  
4 fifteen. I can't be precise because the traffic, because  
5 going toward Peck Slip you got the traffic going on to the  
6 Brooklyn Bridge and sometimes it's quite heavy, so I don't  
7 know for sure.

8 MR. HOPPER: I have no further questions.

9 (Continued on page 101.)  
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THE COURT: All right. Any redirect?

MR. KENNEY: Just very short, your Honor.

REDIRECT EXAMINATION

BY MR. KENNEY:

Q Mr. Lawrence, tell us, if you know, whether the traffic on Water Street is one-way or not. That is the street that runs by 2X on the map, Peck Slip post office.

Can you see that from where you are sitting?

A Yes, I can see it.

It's supposed to be one-way.

Q And which way is it one-way? Do you know?

A I guess it would be east, going east, from Peck Slip Street going toward Dover Street. I guess that would be east.

Q In other words, it runs the opposite direction that you took according to the drawing on the map, is that right?

A As far as X and Peck Slip station, right.

Q And can you tell us why you went against the traffic there?

A Because on the corner of Water and Dover you got a garbage truck company for which his trucks are across -- he always have that corner sealed up.

Q When you left Peck Slip station on April 5th for



the second time in the afternoon, you were on your way to the Church Street Station, is that right?

A Yes.

Q Would it not be more direct to go straight across Fulton Street, rather than go right on Gold Street and across Beekman?

A It would be, but by the block and run and the convoy you was riding with, the route tells you to go this specific way, so, you know --

Q And do you know which way the traffic runs on Fulton Street west of Gold Street? That is to the left of Gold Street as you are looking at the map.

A Fulton Street is a two-way street in that area down there.

Q Is your answer that traffic on Fulton Street to the left or west of Gold Street is two-way?

A Yeah, I presume. I really don't know.

Q Do you know the number of the truck that you were driving on April 5, 1973?

A Yes, I do.

Q What was the number of the truck?

A F 045.

Q Do you know the number of the trip for that afternoon?

A I don't know the number of the trip.

Q Would you look at that paper that you were given by Mr. Hopper just a minute ago?

MR. KENNEY: May this be called 3508 for identification, your Honor?

THE COURT: Yes.

Q Have you ever seen that before, Mr. Lawrence?

MR. DIRENZO: It is objected to, if your Honor please. It was only used to refresh the witness' recollection.

MR. KENNEY: It is not going to refresh his recollection if he has never seen it before.

THE COURT: He wants to know if he saw it before.

MR. DIRENZO: It is possible to refresh a man's recollection by showing a dead white horse, too.

THE COURT: I will overrule the objection.

Q Have you ever seen that before?

A This piece of paper? No.

Q Do you recall ever giving me the times of the route that you took that day?

A No, I don't think so. No.

MR. KENNEY: I have no further questions, your Honor.

THE COURT: All right.

(Witness excused.)

THE COURT: Next witness.

MR. KENNEY: The Government's next witness is Nicholas Parra.

Your Honor, may Mr. Lawrence be free to go? The Government has no need for him.

THE COURT: Do any of the defendants want him for any other reason?

MR. DIRENZO: May we have a representation if we need him we can get him back, your Honor?

MR. KENNEY: Certainly.

THE COURT: Yes.

N I C H O L A S P A R R A, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KENNEY:

Q Mr. Parra, could you tell us what your occupation is, sir?

A I work for the New York post office as a personnel clerk.

Q And how long have you been so employed?

A Twenty years.

Q And could you tell us what your duties entail?

1 gtmch 5

Parra-direct

2 A I take care of personnel records.

3 Q I show you what have been marked Government's  
4 Exhibit 3 for identification and Government's Exhibit 3-A  
5 for identification, and I will put this other document  
6 aside for the moment.

7 Can you identify those two documents, 3 and 3-A  
8 for identification?

9 A 3-A is Form No. 7 --

10 MR. DIRENZO: If your Honor please, the answer  
11 calls for a yes or no, I think.

12 THE COURT: Can you identify that?

13 THE WITNESS: Yes.

14 THE COURT: Yes, he can.

15 Q And could you tell us what 3-A is?

16 MR. DIRENZO: Objected to, if your Honor please.

17 THE COURT: He is not giving us the content.

18 He is telling us it is a form.

19 MR. DIRENZO: Withdraw the objection.

20 THE COURT: Go ahead.

21 A It's Form No. 7, which is called the record of  
22 William P. Hickey.

23 THE COURT: All right.

24 Q Would you tell us what Government's Exhibit 3  
25 for identification is?



A 3 is the official personnel folder of William P. Hickey.

Q Mr. Parra, would you look at Government's Exhibit No. 4 and 4-A for identification, which I will hand you, and can you identify those documents?

THE COURT: Which one do you want first?

MR. KENNEY: 4-A.

A 4-A is Form No. 7 of ex-postal employee William B. McCloskey.

THE COURT: Who? William --

THE WITNESS: William B. McCloskey.

MR. MARTIN: Judge, I am going to object and ask that that be excluded, your Honor.

THE COURT: Overruled.

MR. MARTIN: Respectfully except.

Q And can you identify Government's Exhibit 4 for identification?

A 4 is the official personnel records of William B. McCloskey.

Q Mr. Parra, are you the custodian of those four documents, 3, 3-A and 4 and 4-A for identification?

A Yes, I am.

Q And are those documents kept in the regular course of the post office's business?



A Yes, they are.

Q Is it the regular course of the post office's business to keep such documents and personnel files?

A Yes.

MR. KENNEY: At this time, your Honor, we offer in evidence these four exhibits and we would ask the Court --

THE COURT: Show them first to Mr. Hopper.

MR. KENNEY: Actually, your Honor, I think, if we may, we withdraw our offer as to 3 and 4 and make the offer into evidence only as to 3-A and 4-A.

THE COURT: All right.

MR. MARTIN: Your Honor, as regarding that, I would like to make a motion, if your Honor please.

THE COURT: Will you just wait and get through with Mr. Hopper, whose client Mr. McCloskey is.

MR. HOPPER: Your Honor, I am going to object to the offer and I would like to approach the bench.

THE COURT: You may.

(At the bench.)

MR. HOPPER: Your Honor, Exhibit 4-A, I have no objection to evidence being offered that the defendant William McCloskey worked for the post office. However, Exhibit 4-A contains comments that are very prejudicial to

the defendant.

THE COURT: Let me see it.

(Exhibit 4-A for identification handed to the Court.)

MR. DIRENZO: I don't know what is in it. I don't know what it is even all about.

THE COURT: What do you need that for? You are only trying to show he was employed there.

MR. KENNEY: That's right.

THE COURT: Will you concede that your client was employed by the post office for this period?

MR. HOPPER: Yes.

MR. KENNEY: We would like to elicit the dates and places.

THE COURT: All right. What dates and places do you want?

MR. HOPPER: I understand he worked at Kennedy Airport.

MR. KENNEY: Actually, I have to check my witness sheet, but in substance he was employed in 1970 for a few months and he worked at the Jamaica Station on Long Island and then he left and then he was reinstated or re-employed and he worked at the general post office in New York for a few months and he left there in October

of 1971.

MR. HOPPER: I object on the grounds it is totally irrelevant.

MR. DIRENZO: I respectfully --

THE COURT: Let Mr. Hopper finish his point.

MR. HOPPER: Now that I have heard the times and dates, I don't see that there is anything relevant. The defendant McCloskey I intend to put on the stand. It is part of his work background.

THE COURT: I will let it in.

What is your objection?

MR. DIRENZO: I was going to suggest that this be made in an offer of proof in the absence of the jury so that we could determine what steps, if any, we should take representing the co-defendants.

I don't know what the purpose of it is.

THE COURT: He is trying to show that this man worked in the general post office at a certain period of time. It is perfectly relevant to this case at this stage of the proceeding.

MR. DIRENZO: Well, I am not so sure. The mere fact he might be only offering it for suspicious circumstances, I don't know to what extent it would be relevant to the issue in this case.

1  
2 THE COURT: What else are you going to develop  
3 from this, Mr. Kenney?

4 MR. KENNEY: We wouldn't be able to develop  
5 anything further than the fact that he worked for the post  
6 office for this period of time and that he subsequently  
7 participated in the armed robbery of the mail truck.

8 THE COURT: This is 1971?

9 MR. KENNEY: This is October 1971, but the  
10 Government's evidence will show that the conspiracy  
11 started at least as early as January 1973, and there  
12 were probably acts prior to that which we are not going  
13 to elicit testimony about, including an admission by  
14 the defendant --

15 THE COURT: The mere fact that a man worked in  
16 the general post office --

17 MR. KENNEY: He subsequently is involved in a  
18 robbery as a lookout and there is some evidence that he  
19 is able to identify that mail truck as the mail truck  
20 that registered mail on it.

21 THE COURT: Not for two years before.

22 MR. KENNEY: He would know, working for the  
23 general post office, they have guards. He is the one  
24 that --

25 THE COURT: No, I will sustain the objection.



1 MR. MARTIN: If your Honor please, I --

2 THE COURT: I sustained the objection.

3 MR. MARTIN: I have another one, if your  
4 Honor please.

5 THE COURT: I sustained the objection.

6 MR. MARTIN: I know, but I have another motion  
7 unrelated to that particular objection.

8 THE COURT: Let us get on with this. I won't  
9 take your motion now.

10 MR. MARTIN: It is important, if your Honor  
11 please, if I might make a record. It is on a motion for  
12 a mistrial because McCloskey's name and a document is  
13 not going to go into evidence, and I think it is going  
14 to prejudice --

15 THE COURT: Denied. They are not seeing it.

16 MR. MARTIN: They know it is there.

17 THE COURT: They do not know what is on that  
18 record.

19 MR. MARTIN: But they know there is a record  
20 regarding it and there has been an offer.

21 THE COURT: Denied.

22 MR. KENNEY: Has your Honor ruled with regard  
23 to Government's Exhibit 3-A, which is the card of Mr.  
24 Hickey? Would your Honor like to see that?  
25



THE COURT: Any objection that Mr. Hickey was an employee?

This is going to be proved by somebody else, isn't it?

MR. DIRENZO: On its face, it looks all right to me. I can't see anything --

MR. HAFETZ: I have no objection.

MR. MARTIN: I am going to object to it.

THE COURT: On what grounds?

MR. MARTIN: On the ground it has irrelevant writing. It has "deceased," and I think it is prejudicial to the jury and it has many details going back to 1960 which will --

THE COURT: What is prejudicial to the jury seeing he is deceased?

MR. MARTIN: It is handwritten.

THE COURT: It has already been testified to by the first witness that he was shot that day sitting next to him.

MR. MARTIN: I don't think it has been proven --

THE COURT: Overruled.

MR. MARTIN: Respectfully except.

MR. DIRENZO: The only request I have now, your Honor, most respectfully, I ask your Honor to admonish the

1 jury that they are to draw no inference from any testimony  
2 that was offered in connection with the employment record  
3 of McCloskey. They heard something about it.  
4

5 THE COURT: I will tell them that I have excluded  
6 the employment record.

7 (In open court.)

8 THE COURT: Ladies and gentlemen of the jury,  
9 the witness on the stand has indicated that he had in his  
10 hand the employment record of William B. McCloskey. I  
11 have excluded that record from this trial. You are not  
12 to speculate as to what it shows or what it means or what  
13 it says.

14 3-A is admitted.

15 (Government's Exhibit No. 3-A for identification  
16 was received in evidence.)

17 CONTINUED DIRECT EXAMINATION

18 BY MR. KENNEY:

19 Q Mr. Parra, I show you Government's Exhibit 3-A  
20 and also Government's Exhibit 3 for identification.

21 Can you tell us from Government's Exhibit 3-A  
22 the name of the employee of the post office represented  
23 by that record?

24 A William P. Hickey.

25 Q And when did Mr. Hickey become an employee of the

post office?

A May 16, 1947.

Q And what was the nature of his employment in the year 1973?

A Mail handler.

THE COURT: What?

THE WITNESS: Mail handler.

Q Directing your attention to Government's Exhibit 3 for identification, would you look at that exhibit, and can you tell us from reviewing that exhibit -- have you seen that exhibit before today?

A I beg your pardon?

Q Have you seen that exhibit before you came into the courtroom today?

A Today? No.

Q Did you see it yesterday?

A Yes.

Q And did you have a chance to look at it yesterday?

A Yes.

Q From your review of that record, can you tell us whether Mr. Hickey's duties involved anything else besides mail handling?

MR. MARTIN: I am going to object to that, your Honor.

1  
2 THE COURT: Overruled.

3 A Yes, he worked as a guard.

4 Q And how do you know from the record that he  
5 worked as a guard?

6 A He had a gun permit.

7 Q Does the record also indicate that he qualified  
8 for use of the gun on several occasions?

9 MR. MARTIN: I am going to object to this line,  
10 if your Honor please.

11 THE COURT: Overruled.

12 MR. MARTIN: Respectfully except.

13 A Yes.

14 Q Can you tell us when Mr. Hickey's employment at  
15 the post office terminated?

16 MR. DIRENZO: That calls for a date, your Honor.

17 MR. MARTIN: I object, if your Honor please.

18 THE COURT: Yes.

19 MR. DIRENZO: Just the date.

20 THE COURT: What is the date?

21 THE WITNESS: April 5, 1973.

22 Q Does the record indicate why it was terminated?

23 MR. DIRENZO: Objected to, your Honor.

24 THE COURT: Overruled.

25 A Deceased.



MR. DIRENZO: May I be heard on that objection?

THE COURT: No.

MR. KENNEY: Thank you. I have no further questions of this witness.

THE COURT: Any cross-examination, Mr. Direnzo?

MR. DIRENZO: I have no cross of this witness.

THE COURT: Mr. Martin?

MR. MARTIN: Just one or two, your Honor.

CROSS-EXAMINATION

BY MR. MARTIN:

Q Mr. Parra, you have no individual knowledge of this incident that happened on April 5, 1973?

A No. Only what I read in the papers.

Q And other than what you found out in these records, did you have any conversations with the previous witness, Mr. Lawrence?

A No.

Q Did you have any conversations with Mr. Hickey about this incident?

A No.

THE COURT: Mr. Hickey?

MR. MARTIN: Yes.

THE COURT: About this incident?

MR. MARTIN: About the incident that happened on

*How could he?*  
*Hickey*  
*was*  
*killed*  
*in the incident*



April 5, 1973.

MR. DIRENZO: He means Lawrence, not Hickey.

Q You hadn't spoken to him at any time on that day?

A No.

THE COURT: Mr. Hafetz?

MR. HAFETZ: No questions.

THE COURT: Mr. Hopper?

MR. HOPPER: No questions.

THE COURT: We will adjourn for lunch and resume at 2:00 o'clock.

(The jury left the courtroom.)

MR. DIRENZO: If your Honor please, Mr. Carroll apparently has an application he would like to make to the Court. He has prepared some papers. He just handed some to me which are quite voluminous.

THE COURT: I suggest you read them first, Mr. Direnzo.

DEFENDANT CARROLL: Your Honor, may I address the Court, please?

I made this motion out the other day pursuant that I may be made co-counsel. However, your Honor has ruled against it. But this motion I would like to get into the Court and have it on the record. It is a motion

1  
2 to dismiss on the grounds that the indictment was never  
3 handed down and is not a true bill and I don't believe --

4 THE COURT: You show it to Mr. Durenzo first,  
5 please. He is an attorney. That is the purpose of  
6 having an attorney.

7 (Luncheon recess.)  
8  
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AFTERNOON SESSION

2:00 p.m.

(In open court; jury present.)

THE COURT: You may proceed, Mr. Kenney.

MR. KENNEY: The Government's next witness  
is Donald Greene.

D O N A L D                      G R E E N E,                      called as a  
witness by the Government, being first duly sworn,  
testified as follows:

DIRECT EXAMINATION

BY MR. KENNEY:

Q     Mr. Greene, what is your occupation?

A     Ambulance driver, Beekman Downtown.

Q     And how long have you been so employed?

A     Eight years.

Q     Directing your attention to the 5th of April  
or on or about the 5th of April, 1973, at approximately  
6:30 in the evening, did anything happen to you at that  
time?

A     Yes, it did.

Q     Would you tell us to the best of your recol-  
lection just what happened?

A     Well, after returning from an ambulance call,  
some pedestrian ran up to me and told me someone had

been --

MR. DIRENZO: Objected to.

THE COURT: You can't tell us what they told you.

Somebody spoke to you and as a result of speaking to you, what did you do?

THE WITNESS: I rushed -- I rushed outside with a wheel stretcher up to the corner.

THE COURT: The corner of what?

THE WITNESS: Beekman and William Street.

Q And what did you see when you got to the corner of Beekman and William Street?

A It was a mail truck. Inside the mail truck, it was injured man.

Q And how was the man injured?

A He was injured to his top of his head in this area (indicating).

Q And after you saw the injured man --

THE COURT: Wait. Indicating what?

MR. KENNEY: Indicating the right forehead above the right eye.

THE COURT: Thank you.

Q After you saw the injured man, what did you do?

A Well, with help from other people, I took him



outside of the truck, laid him on the stretcher and rushed him into the emergency room.

Q And do you recall what nurse was on duty when you took the injured man into the emergency room?

A Yes, I do.

Q Who was that?

A Miss Souvenir. That's as close as I can pronounce it, Miss Souvenir.

MR. KENNEY: I have no further questions of this witness, your Honor.

THE COURT: Mr. Direnzo, any cross-examination?

CROSS-EXAMINATION

BY MR. DIRENZO:

Q Mr. Greene, before you did that which you told this jury you did with reference to the stretcher and assisting this injured man, did you know who the gentleman was?

A No, I didn't.

MR. DIRENZO: No further questions.

THE COURT: Mr. Martin.

CROSS-EXAMINATION

BY MR. MARTIN:

Q Mr. Greene, did the injured man make any statement to you?

1  
2 A No, he did not.

3 Q You say that you received help from some people.  
4 Can you tell us how many people were around at that time?

5 A There was quite a bit. I couldn't describe  
6 how many, but it was quite a few people.

7 Q Would you say there were ten or twelve or  
8 at least that?

9 A Yeah, more.

10 Q Were there any police officers around at that  
11 time?

12 A No, there wasn't.

13 Q Were there any firemen around at that time that  
14 you observed?

15 A Oh, I didn't observe any firemen, but the  
16 firehouse is around that area, so they could have been.

17 Q You don't have the names or anything of those  
18 people?

19 A No, I don't.

20 Q But there were substantial amounts of people?

21 A Right.

22 MR. MARTIN: Thank you.

23 MR. HAFETZ: No questions.

24 THE COURT: Mr. Hopper?

25 MR. HOPPER: I have no questions.

THE COURT: All right.

(Witness excused.)

THE COURT: Next witness.

MR. KENNEY: May Mr. Greene be excused, your Honor?

THE COURT: He may be.

DEFENDANT CARROLL: Your Honor --

THE COURT: Yes.

DEFENDANT CARROLL: Your Honor, I made a motion for acquittal --

THE COURT: Pardon me.

The jury is excused. You may go back to the jury room.

DEFENDANT CARROLL: That's why I want to find out. You are going on with the trial. I want a ruling on it.

(The jury left the courtroom.)

THE COURT: Mr. Direnzo, I asked you to look over those papers at the recess. What are they about?

MR. DIRENZO: If your Honor please, I looked those papers over during the Court recess and I took the original set and made them available to your law assistant for delivery to the Court.

The petitioner, in his own pro se application,

1  
2 contends, number one, that there is no signature on  
3 Indictment No. 853 for the year 73 of either the grand jury  
4 or the United States Attorney as appears on the other  
5 indictments, to wit, numbers 583 or 606.

6 Those exhibits are annexed to his papers.

7 I might point out that as I read the contentions  
8 I am reading them exactly as they were written by the  
9 defendant Carroll.

10 Two, he contends that there is no filing number  
11 or microfilm date or stamp on Indictment No. 855 for the  
12 year 1973 as there is on Indictment No. 583 and 606.

13 On the latter two, the dates are correct dates  
14 of the grand jury and he has annexed those exhibits to his  
15 petition.

16 Three, he further contends that the certification  
17 of the documents received from the Clerk's office is a  
18 genuine certification and complete as sworn to above  
19 the Clerk's signature, and those exhibits are, likewise,  
20 annexed to his moving papers.

21 Four, he further contends and he says he verily  
22 believes that there is no true bill, quote true bill, or  
23 indictment on Criminal No. 855, 73, handed down by the  
24 grand jury as prescribed by law, that, in fact, Indictment  
25 No. 855, 73 is merely several pieces of typed papers in



place of a true bill.

As I understand his particular contention that the absence of a specific signature invalidates the indictment and since he is on trial now, he has moved for a dismissal on the merits because of the lack of that signature.

THE COURT: Have you seen the original indictment?

MR. DIRENZO: I have not seen the original indictment.

THE COURT: Here it is (handing).

MR. DIRENZO: When I say I haven't seen it, I had a copy of the indictment, your Honor.

Let the record show that I am showing it to the defendant, your Honor, the defendant Carroll.

THE COURT: Show him where the signature appears, Mr. Dizenzo.

MR. DIRENZO: Yes. There is a signature that appears, Mrs. Irene M. Burke. That is on 73 Crim. 855.

THE COURT: Show him the last page of the original indictment.

What appears there, Mr. Dizenzo?

MR. DIRENZO: The handwritten signature of a Mrs. Irene M. Burke appears thereon and the signature of a Paul J. Curran, United States Attorney, appears thereon.

1  
2 THE COURT: Is there a file date on the first  
3 page of the indictment showing it was filed in this Court?

4 MR. DIRENZO: The file date by a stamp reads  
5 September 11, 1973, U.S. District Court, S.D. of New York,  
6 meaning Southern District of New York.

7 THE COURT: The motion is denied.

8 Bring the jury back and proceed.

9 DEFENDANT CARROLL: May I be heard, please?

10 THE COURT: No, I am sorry.

11 DEFENDANT CARROLL: Your Honor, there is a discrepancy  
12 between that and a certified copy that was sent to me from  
13 the Clerk of the Court.

14 THE COURT: I'm sorry. I'm bound by the document  
15 on file here.

16 Now bring the jury back.

17 DEFENDANT CARROLL: I contend they took that  
18 off the microfilm and that was made out later.

19 THE COURT: Bring the jury back. The motion  
20 has been denied.

21 MR. DIRENZO: May I ask that this be made part  
22 of the record, your Honor?

23 THE COURT: Certainly.

24 MR. DIRENZO: These papers.

25 THE COURT: Staple them together and I will endorse

the back of them for you if you wish me to.

MR. DIRENZO: Thank you, your Honor.

(Jury present.)

MR. KENNEY: The Government's next witness is Frances Souvenir.

FRANCES ELVENENE SOUVENIR,

called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KENNEY:

Q Mrs. Souvenir, what is your occupation?

A I'm a registered nurse.

Q And where are you presently employed?

A At Beekman Downtown Hospital.

Q And where were you employed during the month of April 1973?

A I was in the emergency room.

Q Directing your attention to the 5th of April, 1973 at approximately 6:30 in the evening, do you recall the events of that day?

A Yes, I do.

Q And where were you at that time?

A I was in the emergency room, also, at the time.

Q And do you recall receiving a patient in the

emergency room?

A Yes.

Q Would you tell us what you recall about the patient that you received at about that time?

A I recall that the ambulance driver brought a man with a gunshot wound. He was bleeding profusely from the ears, nostrils and mouth, and he also had brain matter escaping from the left mastoid bone.

Q Where was this man taken?

A He was taken to minor surgery. That is one room we have in the emergency where we take such cases.

Q And did you have any other patients that night with head wounds of any kind?

A No, we didn't.

THE COURT: Do you know the name of the driver who brought this gentleman in to you?

THE WITNESS: Yes.

THE COURT: What was his name?

THE WITNESS: Donald Greene.

THE COURT: Donald Greene?

THE WITNESS: Yes.

THE COURT: Thank you.

MR. KENNY: I have no further questions.

THE COURT: Mr. Dيرانzo?



1 MR. DIRENZO: I have no questions.

2 THE COURT: Mr. Martin?

3 MR. MARTIN: No questions.

4 MR. HAFETZ: No questions.

5 MR. HOPPER: No questions.

6 THE COURT: Thank you very much.

7 (Witness excused.)

8 THE COURT: Next witness.

9 MR. KENNEY: The next witness is Patrick

10 Corcoran.

11 P A T R I C K J. C O R C O R A N, called  
12 as a witness by the Government, being first duly  
13 sworn, testified as follows:

14 DIRECT EXAMINATION

15 MR. MR. KENNEY:

16 Q Mr. Corcoran, you are employed by the New York  
17 City Police Department, is that correct?

18 A Yes, sir.

19 Q And what is your present rank?

20 A I'm a police officer.

21 Q And were you so employed in April of 1973?

22 A Yes, sir.

23 Q On the early evening hours of April 5, 1973,  
24 did you have occasion to go to the Beakman Downtown Hospital?  
25

A Yes, sir.

Q And what time did you go there, if you know?

A Approximately 1730, 5:30 p.m.

Q And when you reached Beakman Downtown Hospital, can you tell us, did you see anyone?

A I seen a man in the operating room.

Q And where was that?

A On the main floor or the ground-level floor.

Q And did you observe his face?

A Yes, I did.

Q Can you tell us if he was wounded in the head or face?

A Well, there was a lot of blood, but I believe he was wounded.

Q On the next day, April 6, 1973, did you do anything in connection with that observation of that man you made on the 5th?

A I went to the Medical Examiner's office and identified the body.

Q And where is the Medical Examiner's office?

A Approximately 38th Street and Third Avenue, I believe.

Q And did you see the same person that you had seen in the Beakman Downtown Hospital the day before?

A Yes, I did.

Q I show you what has been marked Government's Exhibit 5-A for identification and ask you if you can identify that.

A Yes, sir.

Q Would you tell us how you identify that?

A Excuse me?

Q Would you tell us how you can identify that?

A I signed this in the Medical Examiner's office.

Q And is that the copy you signed or is that a photographic copy?

A This looks like the copy, sir.

MR. DIRENZO: I object to this line of examination, if your Honor please.

THE COURT: I don't know what it's about.

MR. DIRENZO: I beg your pardon?

THE COURT: I haven't seen the document yet, so how can I rule on your objection?

MR. DIRENZO: Except he is characterizing something which is not in evidence.

THE COURT: Which has his signature on it.

MR. DIRENZO: That's all.

THE COURT: All right.

MR. DIRENZO: All right.

Q Would you tell us when you put your signature on that document?

A Approximately 9:30 in the morning of the 6th.

Q Was that before or after you saw the man whom you had seen the night before at the Beekman Downtown Hospital?

A After.

MR. KENNEY: I have no further questions of this witness, your Honor.

MR. DIRENZO: Just one question, your Honor.



Q Prior to April 5, 1973, did you ever know a man by the name of Hickey, who was employed as a postal guard?

A No, sir.

MR. DIRENZO: No further questions.

THE COURT: Mr. Martin?

CROSS-EXAMINATION

BY MR. MARTIN:

Q You were called to go to the hospital? Is that what I understood your testimony to be?

A I had an aided case.

Q As a result of that you went to the Beekman Downtown Hospital?

A Right.

Q Did you meet anybody down there other than the injured man?

A I don't understand.

THE COURT: Neither do I.

Q Did you have any discussions with anybody else there, other than the injured man?

Withdrawn.

Were there any other police officers there?

A Yes, there were.

Q Can you tell me who they were?

A I really don't recall at this time.

SOUTHERN DISTRICT COURT REPORTERS

UNITED STATES COURT HOUSE

FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLAND 7-4580

Q Did any police officers tell you what had happened?

A No, sir.

Q Did you have any conversations with any police officers or postal inspectors about what had happened and the reason you were at the hospital?

A I don't recall.

Q Did you make any notes of the incident? Of your visit to the hospital?

A Yes, I did.

Q Do you have those notes with you?

A Yes, I do.

Q Did you make any other written reports of any type?

A No, sir.

Q Did you talk to any detectives concerning what had happened or what you observed yourself in the hospital?

A I don't recall, sir.

Q Did you speak to Mr. Lawrence, Mr. Crawford Lawrence, at the hospital?

A I don't recall.

Q Can I see your notes, officer, please?

MR. MARTIN: May I see them?

THE COURT: Yes. Show them to him.

THE WITNESS: They are in the middle of the page (indicating).

Q Did you yourself at any time make any other written notes, officer?

A No, sir.

Q Now, did you make any other written reports?

A No, sir.

MR. MARTIN: Thank you.

THE COURT: Mr. Hafetz?

MR. HAFETZ: No questions.

MR. HOPPER: No questions.

THE COURT: Did you say it was 5:30 p.m.?

THE WITNESS: That is when I started going to Beekman Hospital.

THE COURT: What time did you get there?

THE WITNESS: That is roughly about what time I arrived.

THE COURT: 5:30?

THE WITNESS: 5:30, maybe twenty to 6:00.

MR. KENNEY: That is inconsistent with other testimony.

MR. MARTIN: I ask that the statement be stricken.

THE COURT: What for? It is obvious on its

face. That is why I am asking the questions.

MR. MARTIN: Yes, but I think his summation of it might have an effect on the jury.

THE COURT: It is not a summation; it is obvious that I am asking the questions because it is inconsistent with the other statements.

MR. MARTIN: I am not objecting to your asking the questions.

THE COURT: He is stating what is obvious. It is incorrect. Do you say it is consistent?

MR. MARTIN: No. The jury may be misled. I ask that it be stricken.

THE COURT: It is perfectly obvious I am asking the question and because the testimony by everybody involved is that this occurred at 6:30.

I'm not saying you are doing anything deliberate; you claim it is 5:30 and I'm trying to find out if there was any reason for your possibly being wrong in the time.

THE WITNESS: You see, sir, I had an aided case in the hospital at the time. This happened while I was in the hospital.

THE COURT: Oh, you were not summoned to the hospital because of this?

THE WITNESS: No, I had an aided case.



1                   MR. DIRENZO: That is why I didn't pursue my  
2                   question.  
3

4                   THE COURT: How long were you in the hospital?

5                   THE WITNESS: Approximately about two and a half  
6                   hours.

7                   THE COURT: You were in the hospital two and a  
8                   half hours from 5:30 on?

9                   THE WITNESS: Yes.

10                  THE COURT: And it was during the time that you  
11                  were in the operating room?

12                  THE WITNESS: Yes.

13                  MR. KENNEY: May I ask the witness what time he  
14                  saw the body?

15                  BY MR. KENNEY:

16                   Q     What time did you see the body?

17                   A     Approximately 6:30.

18                   (Witness excused.)

19                  MR. KENNEY: The government's next witness is  
20                  Doctor Emile Tibere.

21                  E M I L E     T I B E R E, witness called on behalf of the  
22                  government, being first duly sworn, testified as  
23                  follows:

24                  THE WITNESS: I am Assistant Medical Examiner  
25                  at the office of the Chief Medical Examiner of New York.

## DIRECT EXAMINATION

BY MR. KENNEY:

Q Doctor Tibere, I understood you to say that you were employed by the office of the Medical Examiner of the City of New York?

A Yes, I am.

Q Prior to your being employed by the Medical Examiner's office, could you tell us, did you go to medical school?

A I went to medical school in Haiti.

MR. DIRENZO: We are prepared to concede Doctor Tibere's qualifications, your Honor.

THE COURT: Go ahead.

Q Doctor Tibere, directing your attention to April 6, 1973, did you on that day meet a New York City police officer in connection with your duties?

A May I refer to my notes, please?

THE COURT: You may.

THE WITNESS: Thank you.

A (Continuing) On Friday, April 6, 1973, Patrolman and/or Police Officer Patrick J. Corcoran, Shield No. 27184, from the 1st Precinct, identified to Doctor Uku and Doctor Tibere --

MR. DIRENZO: Objected to, if your Honor please.

1  
2 THE COURT: What? As to what Corcoran told  
3 him?

4 MR. DIRENZO: Yes.

5 THE COURT: Overruled.

6 MR. DIRENZO: I object also on the question of  
7 identification. Corcoran has already testified he never knew  
8 the man he later identified at the hospital.

9 THE COURT: He said he saw a person in the  
10 operating room of the hospital.

11 MR. DIRENZO: He saw a man.

12 THE COURT: He saw the same person in the  
13 Medical Examiner's office.

14 MR. DIRENZO: That is correct.

15 THE COURT: Now he said he met Corcoran. The  
16 objection is overruled. Corcoran was here and testified.

17 Go ahead.

18 Q Could you tell us what Patrolman Corcoran did  
19 in your presence?

20 A In the presence of Dr. Uku and Doctor Tibere,  
21 Patrolman Corcoran identified William Hickey at the office  
22 of the Chief Medical Examiner of New York City as the body  
23 of the man he saw at the Beekman Hospital on April 5, 1973,  
24 at 6:25 p.m.

25 MR. DIRENZO: I move that that portion of his

1 answer be stricken, if your Honor please.

2 THE COURT: I will strike only the name  
3 William Hickey. The rest stays in.

4 MR. DIRENZO: But that portion is stricken?  
5 Thank you.

6 THE COURT: Has the doctor answered your  
7 question?

8 MR. KENNEY: Yes, your Honor.

9 Q After that identification, Doctor, did you  
10 perform an autopsy on that body which had been identified?

11 A On Friday, April 6th, I examined the body of  
12 the deceased named William Hickey at the office of the  
13 Chief Medical Examiner at 8:45 a.m.

14 THE COURT: Pardon me, Doctor. You keep  
15 referring to the name William Hickey. How do you know the  
16 name was William Hickey?

17 THE WITNESS: Your Honor, the body had been  
18 identified also to Doctor Uku and Tibere by the son of the  
19 deceased, Mr. Willia T. Hickey, who lives at 36-11 201  
20 Street, a private house in Bayside. I don't know where  
21 that is.

22 THE COURT: Do you want to offer these as  
23 records kept in the regular course of business?

24 MR. KENNEY: Yes.



MR. DIRENZO: Is the offer being made now?

THE COURT: I assume he is preparing to make the offer.

MR. DIRENZO: And I'm preparing to make the objection.

THE COURT: I am prepared to overrule the objection.

MR. DIRENZO: I anticipated that.

Q Doctor Tibere, I show you government's Exhibit 5 for identification and ask you to look through that and tell me if you can identify it?

A If I can do what?

Q If you can identify it? Can you recognize it?

A This is a copy of my dictation, a copy of the diagram, the shot wound; this is a copy of the identification made by Patrolman Corcoran, and that of William T. Hickey, and this is the copy of my handwriting on the cause of death, and this is the copy reported to the office of the Chief Medical Examiner.

THE COURT: Show it to Mr. Drenzo.

VOIR DIRE EXAMINATION

BY MR. DIRENZO:

Q Will you please look at Government's Exhibit 5 for identification. Can you tell us in examining that

document whether the only information which you can ascribe to yourself is just the autopsy report?

MR. KENNEY: Objection. This is a voir dire as to whether this is a business record, as I understand it.

THE COURT: He is entitled to have a voir dire on a business record. He wants to know what it is.

MR. KENNEY: The foundation was as to whether they are records in custody, not did he make the records.

THE COURT: He is trying to find out what they are.

MR. DIRENZO: I withdraw the question.

Q Let me put it to you this way: with reference to the items contained in Government's Exhibit 5 for identification, the report you hold before you, is it a fact that the identification notations concerning the deceased were not taken by you?

A The information has been taken by the clerk, and after filling out the paper the clerk showed up to do the identification at the mortuary, where I am supposed to be, and identified to other doctors and myself the deceased as such.

Q Now, Doctor, you were not present, is it a fact, at the point where the identification of that body was made? Is that correct?

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A I was present, sir.

Q Did you overhear and participate in the identification process?

A YES, I did, because whenever someone comes to the office to do an identification he is accompanied by the clerk to the doctors responsible or in charge of the case, sir, and identifies himself as a patrolman or such and such and he comes to the identification of such and such body.

Q Were you present when Mr. Hickey, Jr. made the identification which you say is reported in this document?

A According to my papers I was present.

Q You were present?

A Yes.

Q When the identification was made, Doctor?

A The identification by William T. Hickey was made on April 6, 1973, at 10:00 a.m.

THE COURT: You were present when that identification was made?

THE WITNESS: In the presence of Doctors Uku and Tibere.

BY MR. DIRENZO:

Q Did you testify on direct examination that that identification was made in the presence of two other doctors? Or were there two other doctors including you?



1  
2 A Including me.

3 MR. DIRENZO: You have answered my question.

4 THE COURT: Do you object, Mr. Drenzo?

5 MR. DIRENZO: Yes, I still object on the  
6 grounds that a proper foundation for the identification has  
7 not been laid. Hickey, Jr. has not been sufficiently  
8 identified for the purposes of identification of Hickey,  
9 Sr.

10 THE COURT: That is not necessary under the  
11 shop book rule. It goes to the weight to be given to the  
12 document. The document comes in. You have an exception.  
13 Overruled.

14 Mr. Martin, do you have any objection?

15 MR. MARTIN: I join in the objection.

16 MR. HAFETZ: Objection.

17 THE COURT: All right.

18 (Government's Exhibit 5 for identification was  
19 received in evidence.)

20 MR. KENNEY: 5A is a portion of 5 and has been  
21 identified by Corcoran. We have not laid the ordinary  
22 foundation.

23 MR. DIRENZO: I am sorry, your Honor.

24 THE COURT: Do you want to ask the qualifying  
25 questions? I thought that was conceded.



1 MR. KENNEY: We would not ask him if they are  
2 conceded.  
3

4 MR. DIRENZO: I conceded his qualifications.

5 THE COURT: That is not what we are asking  
6 about. Mr. Kenney did not ask the necessary qualifying  
7 questions to admit the document as a business record. Do  
8 you want him to go through those questions with the  
9 witness? If you do, he will.

10 MR. DIRENZO: May I have the Court's indulgence?  
11 Counsel want to confer.

12 I might point out that when I looked at the  
13 document I was only concerned with the issue of identifi-  
14 cation, so that if there is any other basic objection, I  
15 can't refer to it right now unless I look at the document  
16 again.

17 THE COURT: Look at it again.

18 MR. DIRENZO: We also ask the United States  
19 Attorney whether he is offering just Government's Exhibit  
20 5 or 5A included?

21 THE COURT: 5A is part of 5. 5 would cover 5A.

22 MR. KENNEY: That is correct, your Honor.

23 Your Honor, all defense counsel have had  
24 copies of this document.

25 THE COURT: They wish to discuss it.

1  
2 MR. KENNEY: I thought maybe they didn't  
3 realize that.

4 MR. MARTIN: I ask that that be stricken, what  
5 the United States Attorney said, that he thought we didn't  
6 realize it.

7 THE COURT: What is your point, Mr. Drenzo?

8 MR. DIRENZO: If your Honor please, basically,  
9 even if the Court felt that it is receivable in evidence  
10 as a proper legal document, I don't think that last page  
11 is receivable in evidence.

12 THE COURT: Let me see it.

13 MR. HAFETZ: May I look at it?

14 THE COURT: I understand you have a copy of  
15 this, Mr. Hafetz.

16 MR. MARTIN: I have not seen it to compare it,  
17 if your Honor please.

18 MR. HAFETZ: What number?

19 MR. KENNEY: This was turned over on pre-trial  
20 discovery last summer.

21 MR. DIRENZO: I don't think everything is in  
22 it. We have the autopsy report.

23 THE COURT: You're talking about the last page  
24 now?

25 MR. DIRENZO: The last page definitely.

1  
2 THE COURT: I think the last page should be  
3 removed.

4 MR. KENNEY: We have no objection.

5 MR. DIRENZO: The other objection I would make,  
6 if your Honor please, is that since Doctor Tibere is here  
7 testifying as a competent medical examiner, one who made  
8 an examination of this body and performed an autopsy and  
9 examined the vital organs, he, of course, constitutes the  
10 best testimony or evidence we can get from that document.  
11 I would like to state further, if I may, that my under-  
12 standing of the law --

13 THE COURT: I'm sorry. You have made your  
14 objection?

15 MR. DIRENZO: Right.

16 THE COURT: My ruling as a matter of law, your  
17 objection is overruled. It is in evidence, and it is in  
18 evidence, I understand, with the waiver by defense counsel  
19 of the necessary qualifying questions. If that is not so,  
20 Mr. Kenney, get up.

21 MR. MARTIN: I have not looked at the document  
22 yet.

23 MR. HAFETZ: If I can look at the document I  
24 can then tell if it is the same document I have a copy of.

25 MR. KENNEY: If I may, there is just simply a



transmittal page which I will remove to eliminate any problem of prejudice.

MR. HAFETZ: I ask to look at it for a moment.

MR. KENNEY: I will leave it on so you can see it. It is a transmittal letter.

MR. HAFETZ: We do not have a full copy of the document.

THE COURT: Take a look at it now, Mr. Hafetz, and let's stop wasting time.

MR. KENNEY: If your Honor please, this copy --

THE COURT: Mr. Kenney, he says it is not what he has; so, therefore, give him an opportunity to look at it. The collateral question of whether it does or does not makes no difference, and discussing that only delays the trial.

(Continued on next page.)



roll  
1  
2 MR. MARTIN: Your Honor, I am going to speci-  
3 fically object to the first page, the envelope and the  
4 last two pages that I have in my hand now.

5 THE COURT: Mr. Kenney?

6 MR. KENNEY: We have no objection. We are not  
7 going to offer the first page, which is the transmittal  
8 letter, or the envelope, which is the envelope in which  
9 the papers arrived in our office.

10 I am not sure what Mr. Martin is referring to  
11 in the last two pages.

12 May I see that?

13 MR. MARTIN: Your Honor, that is in addition to  
14 my regular objection that was made by Mr. Direnzo.

15 MR. KENNEY: We withdraw our offer as to the  
16 second to the last page, which is not relevant, but we do  
17 not withdraw our offer as to the last page.

18 MR. MARTIN: The last two pages I was objecting  
19 to.

20 THE COURT: I gather there is still in your  
21 offer now, Mr. Kenney, one page to which Mr. Martin objects.

22 MR. KENNEY: Yes.

23 THE COURT: Let me see it.

24 MR. KENNEY: May I remove the transmittal page  
25 and the envelope, your Honor?

1 THE COURT: Certainly.

2 (Pause.)

3 THE COURT: The objection is overruled. The  
4 document as now offered is received in evidence.

5 MR. KENNEY: I am sorry, your Honor, but I am  
6 still a little bit confused whether defense counsel has  
7 conceded the business record foundation or not.

8 THE COURT: I gather they have, because I  
9 have asked them.

10 MR. MARTIN: I haven't.

11 THE COURT: You haven't?

12 MR. MARTIN: No, your Honor.

13 THE COURT: Then ask the questions, Mr. Kenney.

14 BY MR. KENNEY:

15 Q Doctor Tibere, directing your attention to  
16 Government Exhibit 5 for identification, which I will show  
17 you again now that some of the pages have been removed,  
18 is that a copy of records which are in your custody?

19 A Yes, it is.

20 Q And are those records kept in the regular  
21 course of the business of the Medical Examiner's office?

22 A Yes, they are.

23 Q And is it the regular course of the business  
24 of the Medical Examiner's office to keep those records?  
25

1  
2 A That's the way we proceed.

3 MR. KENNEY: We now offer Government Exhibit  
4 5 for identification, your Honor.

5 THE COURT: Received in evidence.

6 (Government Exhibit 5 was received in evidence.)

7 MR. KENNEY: That would include 5A.

8 MR. DIRENZO: Our objections are still noted,  
9 your Honor.

10 (Government Exhibit 5A was received in  
11 evidence.)

12 Q Doctor Tibere, after you finished the examina-  
13 tion and autopsy which is referred to in Government Exhibit  
14 5 did you reach a conclusion as to what the cause of that  
15 man's death was?

16 THE WITNESS: First of all, your Honor, may I  
17 describe whatever I saw on that body?

18 THE COURT: Mr. Kenney doesn't ask you to,  
19 therefore, what is the point of doing it?

20 THE WITNESS: Okay. Very good.

21 A Yes, I had a conclusion.

22 Q And would you tell us what the cause of death  
23 was?

24 A Bullet wound of head and brain.

25 Q I am sorry, I don't understand. Could you



repeat that?

A A bullet wound of head and brain.

Q Thank you.

MR. KENNEY: I have no further questions of this witness.

THE COURT: Mr. DiRenzo?

CROSS-EXAMINATION

BY MR. DIRENZO:

Q Doctor Tibere, can you tell us who made the identification of the individual whose body you performed an autopsy on?

A Yes, first were Patrick J. Corcoran, police officer, shield number 27184 from 1st Precinct, and William T. Hickey, son of the deceased, residing at 36-11 211th Street, private house, Bayside.

Q Isn't it a fact, Doctor, that the identification of the party who made the identification of the body was a man by the name of Frank Simmons, who resided at 7 Eklund Boulevard, Lake Ronkonkoma, Long Island?

A Yes, son-in-law of the deceased, William Hickey, Frank Simmons, 7 Eklund Boulevard, Lake Ronkonkoma, Long Island; something like that.

THE COURT: Do I gather from your answer, Doctor, that you are saying both of them made the identifi-



1 cation?

2 THE WITNESS: Yes, your Honor.

3 THE COURT: All right.

4 Q In other words, there was this Frank Simmons and  
5 William T. Hickey who made the identification?

6 A And Patrolman Corcoran.

7 Q In other words, there were three identifications?

8 A No, sir. Two identifications.

9 THE COURT: Two.

10 A But more than one person can accompany someone  
11 else to do the identification. We had two people on that  
12 case.

13 Q Did you also ascertain Mr. Simmons hadn't seen  
14 the man whose body he identified for some three years?

15 A What is your question, please?

16 Q Did you also ascertain that one of the identifiers  
17 had not seen the man who you had examined for a period of  
18 approximately three years?

19 A I have that in my papers.

20 Q And did you also ascertain that the second  
21 identifying person hadn't seen that individual for approxi-  
22 mately a year and a half?

23 A Yes, sir, I have that in that paper.

24 Q In your examination of the body, and we will just  
25

1 use lay person's language at this point, if we may, you made  
2 a determination, did you not, that at the point of entry of  
3 the bullet there were powder marks?  
4

5 A Yes, sir, there is.

6 Q And did you also, predicated on your long  
7 experience, determine that from the end of the barrel to the  
8 point of entry there was a distance of no more than six  
9 inches?

10 A Approximately.

11 Q Can you describe to this jury the area, the  
12 approximate area, if you can, of the powder burns that you  
13 observed on the body of the deceased, the man you examined?

14 A I have to refer to my notes, sir.

15 Q You do that, Doctor, if it aids you.

16 A May I have someone to show on him where --

17 THE COURT: No. We will take your word for it,  
18 Doctor.

19 A There was a bullet wound located at 5 feet 7 and  
20 three-fourth inches above right heel.

21 THE COURT: Would you indicate on your head  
22 where that would be?

23 THE WITNESS: In a standing position, this would  
24 be around here for anyone who is 5 foot 10 inches tall  
25 (indicating).

MR. DIRENZO: Let the record indicate, with the Court's permission, that the doctor is pointing his finger at the eyebrow immediately in the center above his right eye.

A Excuse me, slightly below the eyebrow.

Q Slightly below?

A And --

THE COURT: He is answering your question. He hasn't finished.

MR. DIRENZO: I am trying to get the answer as to the extent of the powder burns.

A I am coming to it.

And one and one half inches to the right of the anterior midline -- we are referring to any fixed anatomical points on a body to describe wound or wounds where they are located from heel to anywhere, in standing position from the ground to anywhere on the body -- and three sixteenths of an inch below the midportion of the right supraciliary ridge. That is where I said, slightly below (indicating).

The bullet wound measures five sixteenths by six sixteenths inch in diameter. Surrounding the bullet wound is a very thin red-pinkish marginal epidermal abrasion collar measuring one sixteenth of an inch in width. This is epidermal region of the entrance of the bullet wound.



1                   gtd8                   Tibere-cross                   482a                   155  
2                   When the bullet first strikes the skin, a small  
3 piece of the skin in a circular form is also removed by the  
4 force of the bullet before entering the skin.

5                   There is a marked plum-purple ecchymotic  
6 reaction in the loose tissue of the upper right eyelid.  
7 With the bullet wound as a center, stippling abrasions are  
8 noted in an area measuring one and three quarter inches in  
9 diameter. This was stippling referred to as powder burns or  
10 tattooing noted on the main entrance bullet wound made on  
11 the skin by unburned powders or small fragments of metal  
12 from the bullet itself.

13                   Q           Are you through, Doctor?

14                   A           In any close range wound, most of the time when  
15 the gun is not a smokeless one or powder has been used to  
16 constitute the charge of the bullet, most of the time  
17 unburned powders and burned powders leave also traces on the  
18 skin around the main entrance of the bullet wound and this  
19 can be noticed for most handguns in a distance from the  
20 target to the muzzle at about up to 12 inches.

21                   Q           Now, can you tell us, in plain simple layman's  
22 language, what the extent or area of the gunpowder wound  
23 reflected?

24                   A           Those stippling abrasions are noted in an area  
25 extending from the orbital area to the dorsal aspect of the



1  
2 nose.

3 Q Now, Doctor, tell me, when you performed this  
4 autopsy, recognizing that the penetrating wound found its  
5 original site right below the eyebrow and in the area of  
6 the right region -- is that correct?

7 A On the right side, yes.

8 Q In examining the ecchymotic area where the  
9 bullet penetrated, did you find gunshot powder on the inner  
10 area of the penetrating wound?

11 A You said on the inner area of the penetrating  
12 wound?

13 Q That's correct.

14 A No.

15 Q Now, you have examined thousands of cases  
16 involving gunshot wounds, is that correct, Doctor?

17 A Yes, I do.

18 Q I would like you to tell this jury where this  
19 bullet -- withdrawn.

20 There was a point of entry for the bullet,  
21 correct?

22 A Yes.

23 Q And there was a point of exit?

24 A Yes.

25 Q Now will you tell us where the bullet exited

from your examination?

A You said to the jury. I have to explain that to them.

Q Would you do that, please?

A Very good.

The bullet track -- we mean by track where the bullet travels from any point in the body to wherever the bullet will be located or leaves the body. In a bullet wound we have to consider maybe one hole, maybe two holes, maybe more than two, but bullets in tracks can leave the body.

Q When you do that, don't point at me. Yes, Doctor?

A And the bullet can also become fragmented in its course and can make more than one track in the body.

This is not the case in such case. The bullet track. The bullet penetrates the cranial cavity, that is the inside of the skull, toward the right orbital cavity -- this is the orbital cavity where the eye lobes or eyeballs are, one and two (indicating) -- fractures the rooves of the orbital cavities -- that means the roof of the orbital cavities are made by part of the frontal bones, this bone in the front of the face (indicating) -- right and left orbital cavities, lacerated the soft tissue of the posterior aspect of the right eyeball, lacerates the full thickness of

the right frontal lobe of the brain, the cerebral peduncles, passes to the left side of the cranial cavity, lacerates the full thickness of the occipital lobe on the left side of the brain, perforates the calvarium -- this is called the calvarium, the upper part of the skull -- at the level of the upper left posterior limits of the temporal -- this area -- parietal -- this area -- and occipital bones, slightly on the back of the head, perforates the scalp -- the scalp is the skin covering this area -- at this level where the bullet leaves the cranial cavity.

This is the exit wound.

The direction of the bullet wound is from front to back, right to left and slightly downward in the deceased's body. The bullet track measures -- that means from the entrance to where the bullet exits -- measured eight and one half inches in depth in the person's body.

THE COURT: Doctor, will you please turn your head around and show the jury where the bullet exited the head of the decedent?

THE WITNESS: Yes, your Honor.

The bullet penetrates here and exits around here (indicating).

MR. DIRENZO: Indicating the left portion of his head.

1  
2 A Left side.

3 Q Left side.

4 Now, Doctor, in determining the track that that  
5 bullet took, is it fair to state that it was in a reasonably  
6 straight line of flight?

7 A This is a straight line.

8 Q At an angle?

9 A Yes, there is an angle, because at the entrance  
10 wound it is on the right side and the exit wound is on the  
11 opposite side.

12 If we take the anterior midline as a part of a  
13 perpendicular plane and we draw a line from the entrance to  
14 there, those two lines will meet at an angle inside of the  
15 cranial cavity.

16 Q In other words, it would be pretty much of a  
17 slight line from the right eye to the left side of the head?

18 A If you can call it straight line, but straight  
19 line on an angle considering the anterior midline.

20 Q In other words, it didn't take a downward track,  
21 it took a --

22 A Slightly.

23 Q Slightly?

24 A I said that.

25 Q At some time during the course of your



1  
2 examination, did you make a finding that a portion of the  
3 skull at the point of entry of this bullet was shattered?

4 A I can see the orbital plates of the frontal  
5 bones and also the body of the sphenoid bone and also the  
6 left temporal, parietal and occipital bones where they meet  
7 at the level of the lambdoid had been shattered.

8 Q Doctor, again, predicated on your long experi-  
9 ence in this highly specialized field, for a bullet to make  
10 entry at the point of entry as you have described it here  
11 and exit through the skull, is it fair to state that it  
12 would have to be fired in very close proximity to the head of  
13 the victim?

14 A No, this is not the rule.

15 Q It is not the rule?

16 A This is not the rule.

17 Q The fact that this did happen, would that indi-  
18 cate that the gun or the barrel or the nose of the gun was  
19 in close proximity to the victim?

20 A I found on the main entrance bullet wound to  
21 make me to do examination. This is a close range bullet  
22 wound.

23 Q Would the fact that a bullet fired in close  
24 proximity to a man sitting in a truck and we find that the  
25 bullet wound had a point of entry and a point of exit and

1 that the same bullet struck someone else, the same bullet,  
2 would that indicate to you that the gun was placed in very  
3 close proximity to each of the victims?  
4

5 MR. KENNEY: Objection.

6 THE COURT: I understand. I understand by close  
7 proximity the Doctor is using with relation to roughly six  
8 inches. That is what you are talking about, close?

9 THE WITNESS: Yes, your Honor.

10 THE COURT: I don't know what you mean by  
11 close with somebody sitting next to him.

12 MR. DIRENZO: We have Mr. Lawrence's testimony.

13 THE COURT: We are having a question of  
14 semantics here. Is close two feet?

15 MR. DIRENZO: Oh, no, he indicated it was very  
16 close to him at this point.

17 THE COURT: He was close to him, but he had no  
18 idea whether it was six inches or two feet.

19 MR. DIRENZO: He had indicated at one point  
20 between the two, if they were sitting normally, there  
21 wouldn't be a difference or a space of more than one foot,  
22 but he said at the point of impact he was very close to him.  
23 I think that was his examination.

24 THE COURT: But their heads and bodies are  
25 different. Shoulders are closer than heads are.

1 MR. DIRENZO: May I have the Court's indulgence  
2 for just a minute?  
3

4 THE COURT: Yes.

5 MR. DIRENZO: I think I have the area pretty  
6 well covered, until we got to close range of the neck  
7 wound, your Honor.

8 THE COURT: Yes.

9 (Pause.)

10 MR. DIRENZO: No further questions, your Honor.

11 THE COURT: Mr. Martin?

12 MR. MARTIN: Yes, I have some.

13 CROSS-EXAMINATION

14 BY MR. MARTIN:

15 Q Doctor, did you have occasion to examine the  
16 actual bullet that went through the body's head that you  
17 examined?

18 A No, sir.

19 Q Did you ever make any report or tests with the  
20 actual bullet yourself?

21 THE COURT: He said he never had it.

22 Q Do you know if any tests were made with the  
23 actual bullet to confirm your findings?

24 A This is an in and out wound I described on that  
25 particular body. I don't know what happened to the bullet

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when it leaves the body.

Q Did anybody ever ask you to look at this bullet to see if that could have been the bullet that caused the accident, caused the damage you testified to?

A I don't even know if the bullet has been recovered elsewhere?

Q You don't have any knowledge of that?

A No.

Q Did you make any tests at all, Doctor, at the request of the police, confirming the trajectory of the bullet through the body?

A Make your question more clear for me, please. I don't see what you mean.

Q Do you have any other information, Doctor, other than you furnished on this paper, on these papers or that you testified to?

A Nothing else than this.

Q There are no other records concerning your investigation or your office's examination of the body?

A I have all the papers with me and that's all. Nothing is left behind.

MR. MARTIN: And does that coincide with this, Mr. Kenney?

MR. KENNEY: I have not examined Doctor Tibere's



1 file.

2  
3 MR. MARTIN: May I examine the file, your  
4 Honor?

5 THE COURT: Yes.

6 A You will find two or three papers besides that.  
7 That's all right.

8 Q And you say as the bullet came out at the back  
9 of Mr. Hickey's head, it was in a downward --

10 A Slightly.

11 Q Slightly downward?

12 A Yes.

13 Q Thank you.

14 Doctor, would that have meant that the bullet  
15 was shot facing down or upward or would the course through  
16 the body have an effect on the angle at which it left the  
17 body?

18 A What is the question, please?

19 Q Are you able to tell from your examination and  
20 from your report whether the shot was fired -- the shot that  
21 coursed through the body as you found the path, whether that  
22 shot was fired while it was pointing down or straight or  
23 upward?

24 A I do not know.

25 Q And would the fact that the bullet left the

body in a slightly downward position, could you tell from that from what position the bullet was fired, from above facing down, even or up?

A According to what I described on the body, slightly downward. That's all I can tell you.

Q But at the impact of entry from the exit wound can you tell in what position the shot was fired, whether it was a shot fired from above, straight or below?

A We cannot say that. I can't tell you of the track from the entrance to the exit up to the bones which have been fractured by the bullet, because at this time, when the bullet meets resistance on its way, the bullet can go anywhere else.

Q So you wouldn't be -- I am sorry.

A It is the so-called track of the bullet. I don't know. It can have another target, it can fall free. I don't know.

Q From your examination, there was only one bullet involved?

A One bullet wound and making two holes, one entrance and one exit in the head of the body that I examined.

Q Just one bullet?

A Yes. sir.

Q Thank you.

THE COURT: Mr. Hafetz?

MR. HAFETZ: No questions.

THE COURT: Mr. Hopper?

MR. HOPPER: I have no questions.

THE COURT: Thank you very much, doctor.

(Witness excused.)

THE COURT: We will have a short recess.)

(Recess.)

(Continued on page 166.)

(In the absence of the jury.)

MR. KENNEY: Your Honor, the government would call Mr. Chester Crawford as its next witness, and in the midst of Mr. Crawford's testimony, would your Honor grant Mr. Crawford immunity from prosecution for the use of his testimony for the robbery charge in connection with Rocco DiGeorgio outside the Plaza National Bank in Secaucus, New Jersey, on March 22? The government seeks to inquire into conversation with regard to that on the night of the 21st, and we suggest to the Court that the best procedure to follow would be for the government to elicit all of the direct examination of Mr. Crawford first and allow him to be cross-examined by defense counsel after that; then to excuse the jury and to grant him immunity with regard to these limited facts on the 22nd, and then to allow defense counsel to cross-examine him just only as to those limited facts.

THE COURT: Mr. DiRenzo?

MR. DIRENZO: Number one, just so I can put my argument in proper focus, do I understand that the immunity which Mr. Kenney is about to make the application for to this Court is a limited immunity concerning the incident outside the Plaza Bank? Or is it an immunity governing the April 5th transaction as well?



1  
2 MR. KENNEY: No, it only relates to the matter  
3 outside the bank.

4 THE COURT: You have been served with a copy  
5 of these papers.

6 MR. DIRENZO: We have been served with a copy  
7 of the papers, but not of the Peterson order. I would  
8 object to it and object on the following ground --

9 THE COURT: Your objection to the grant of  
10 immunity? Or to the procedure suggested by Mr. Kenney?

11 MR. DIRENZO: To the grant of immunity, and  
12 the reason why I am objecting to the grant of immunity, in  
13 addition to all the arguments we have already made -- I'm  
14 not waiving those -- but let's assume for the sake of argu-  
15 ment we had defendants seated at counsel table charged with  
16 that particular crime, the one he seeks to give Chester  
17 Crawford immunity for under the use immunity statute, I  
18 could conceivably see a situation where the District  
19 Attorney could say to a defendant seated at a table, "I'm  
20 going to give you immunity," and compel that witness to be  
21 a witness against the co-defendants.

22 Now, if he were a co-defendant in a given case,  
23 if he had made any statement to the United States Attorney,  
24 we would have a serious Bruton problem at that point which  
25 I feel we could urge successfully on behalf of other

1 defendants if we were at a trial, and it seems to me that  
2 this does substantial violence to the rights of the  
3 defendant, and I think under those circumstances immunity  
4 should not be granted to this witness under these circum-  
5 stances.

6  
7 THE COURT: That is the whole purpose of the  
8 statute, is it not?

9 MR. DIRENZO: Yes, but where you are making a  
10 grant like this, forgetting the fact that in the Kastigar  
11 case we had a pretty much divided court, and there had been  
12 very many interesting articles written on this, I think  
13 the government is going too far in permitting this sort of  
14 thing to happen. I do not think 6002 of Title 18 within  
15 its legislative intentment was calculated or even enacted  
16 for this particular purpose. Almost invariably you find it  
17 in a grand jury situation, not that I am unmindful of the  
18 language that appears in the statute under 6002. It  
19 specifically mentions the fact of a proceeding before the  
20 court.

21 It seems to me that under these circumstances  
22 we are really stretching 6002 to the point where it does  
23 violence to our criminal procedure concepts.

24 THE COURT: Well, I had a case somewhat similar  
25 to this about eight months ago, immunity with respect to the

1 Bankruptcy Act, and the man testified, and I dismissed the  
2 indictment because he had the immunity. The matter is  
3 before the Court of Appeals now. I think the section was  
4 geared just for this type of situation. It may be that it  
5 comes up most directly in grand jury situations. But it  
6 can come up on a trial, and the statute refers to the  
7 district court and proceedings in the district court.  
8

9 MR. DIRENZO: I can find logic for the Court  
10 justifying its position. Don't misunderstand me. And I'm  
11 not being presumptuous; I'm just trying to be a lawyer.

12 THE COURT: I understand.

13 MR. DIRENZO: If we go into the original history  
14 or concept of the use of the immunity statute, it is my  
15 recollection when it was enacted in 1970, I think, and  
16 ultimately passed upon by the Supreme Court, I think, on  
17 May 22 of 1972, originally it came under the caption or  
18 heading, I think, The Organized Crime Act. Now, recognizing  
19 that too, it would seem to me that this statute should come  
20 into play when all of these conditions precedent are present,  
21 and I say they are not present.

22 THE COURT: I'm sorry, the statute is general.

23 MR. DIRENZO: I am afraid it is general, and I  
24 don't like it representing defendants.

25 THE COURT: You made your point. I will hear

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what Mr. Martin has to say.

MR. MARTIN: I would like a recess. I have not received a copy of this, nor the letter.

THE COURT: You've got a copy in your hand now.

MR. MARTIN: They just gave it to me.

THE COURT: Well, sit down and read it now.

Mr. Hafetz?

MR. HAFETZ: I've got nothing further to say on this, Judge. When we finish with this I have one other application. I can make it in the interim.

THE COURT: Go ahead.

MR. HAFETZ: I understand that with regard to Chester Crawford, Paul Crawford and Myers, I believe there was indication when they took their plea of guilty that they made two statements, at least, Myers had; one statement was initially at the time of the arrest, it was a written statement or Q and A, which was transcribed or written by postal agents. The second was a statement made in the presence of their counsel after a decision had been made to plead guilty and testify for the government.

I have already made a request of Mr. Kenney, and he has answered me off the record, but I would like to put it on the record -- I think it would be more appropriate, my request and his response -- I've asked for his written



1 notes of that second statement, the time that the witnesses,  
2  
3 reputed witnesses for the government in the presence of  
4 their counsel were interviewed by Mr. Kenney. He has  
5 advised me off the record that he has no written notes of  
6 that statement.

7 THE COURT: Is that true, Mr. Kenney?

8 MR. KENNEY: Yes. I have turned over to counsel  
9 for the defense any note which is in my file which in any  
10 way reflects anything that I may have learned from any of  
11 the defendants. That may cause some problem in cross-  
12 examination, but I feel in a case of this nature it is  
13 important that defense counsel have all those things. I  
14 therefore, have nothing in my possession which is a state-  
15 ment by any witness; they have been turned over.

16 Mr. Hafetz is speaking, I think, of a statement  
17 similar to the extensive statements taken on June 8th  
18 and later on of several defendants who are now witnesses.  
19 There are no similar extensive statements of that type.  
20 I think what was referred to in the Court's allocution on  
21 the guilty pleas are, in fact, conversations which the  
22 defendants had with myself and with their counsel present  
23 at the time they decided to plead guilty. There are no  
24 notes of those particular conferences.

25 THE COURT: That confirms what you said,

1           Mr. Hafetz.

2                   Mr. Hopper?

3                   MR. HOPPER: If I understand Mr. Kenney, he  
4                   wants to question Crawford on direct and have cross-  
5                   examination, and then have a second phase?  
6

7                   THE COURT: Yes.

8                   MR. HOPPER: I object to that strongly. It  
9                   denies me effectual cross-examination. I want to hear  
10                  this witness in his totality before I ask him questions.

11                  THE COURT: I don't see any reason, Mr. Kenney,  
12                  why it can't be done all at once. Under the statute you  
13                  are entitled to this order if you think the defendant is  
14                  going to take the Fifth Amendment.

15                  Is Mr. Crawford's attorney here?

16                  MR. KENNEY: Yes.

17                  MR. GOLD: My name is Jay Gold.

18                  THE COURT: Would you come forward, Mr. Gold?  
19                  Is it your understanding that Mr. Crawford, your client,  
20                  would take the Fifth Amendment, or you would so advise him  
21                  to take the Fifth Amendment if he were asked questions  
22                  regarding the events that took place outside the Plaza  
23                  National Bank in Secaucus, New Jersey, on March 22, 1973,  
24                  and the conversations concerning that event the night before?

25                  MR. GOLD: Yes, sir.

1  
2 THE COURT: He would take the Fifth Amendment?

3 MR. GOLD: Yes.

4 THE COURT: The way to handle it, then, since  
5 you formally advised the Court, is for you to advise  
6 Mr. Crawford that I have signed the order granting him  
7 immunity. You may take it in and show it to him before  
8 he comes out, and, therefore, he will be directed to  
9 answer the questions. You can tell him so.

10 MR. GOLD: Will it be necessary for him to  
11 assert his privilege?

12 THE COURT: No, under the statute, as you  
13 recall, and I will read it to you, it says that the United  
14 States Attorney may, with the approval of the Attorney  
15 General or Deputy Attorney General, or any deputized  
16 Attorney General, request an order under subsection N(a)  
17 of this section when in his judgment such individual has  
18 refused or is likely to refuse to testify. That is why  
19 I put the question to you. You have now told us that he  
20 would refuse to testify?

21 MR. GOLD: Yes. It was simply my understanding  
22 that in order to secure the immunity he would have to first  
23 assert his privilege.

24 THE COURT: The statute says, "or is likely to  
25 refuse," and I have taken your representation. If you



1 want to go in and have him reaffirm his statement, do so,  
2 because I will not allow the taking of the Fifth and  
3 granting of the order to take place before the jury. r  
4 will allow defense counsel, however, to cross-examine him  
5 as to whether he did not receive immunity from prosecution.  
6 That is perfectly fair cross-examination.  
7

8 MR. GOLD: I am completely clear on his  
9 position; he will assert his privilege.

10 THE COURT: Therefore, would you tell him that  
11 you have asserted the privilege for him, which you can do  
12 representing him, and that I have signed the order, which I  
13 am going to give to you, and exhibit the order to him, and  
14 when he testifies he will be testifying under a grant of  
15 immunity?

16 MR. GOLD: I will so advise him, your Honor.

17 MR. KENNEY: The order is drafted in such a  
18 way as to limit the immunity to those facts relating to the  
19 March 22 robbery. We had some serious doubts whether we  
20 would be able to limit as a practical matter the immunity  
21 if you were to grant the immunity first and then have him  
22 testify to all the events which we intend to elicit  
23 evidence on.

24 THE COURT: I understand that. You have a  
25 perfect right to ask him questions regarding April 5th.



1 MR. KENNEY: I don't think that is true. I  
2 think to a great extent, except that he has agreed to do  
3 that, he can claim his Fifth Amendment privilege for  
4 several reasons: one, because there are open counts in  
5 the indictment; two, because he could be prosecuted in  
6 the State of New York, and possibly in the State of New  
7 Jersey; three, because before he is sentenced under Rule  
8 32, he might ask to withdraw his guilty plea if he so  
9 chose and the facts should support that.  
10

11 THE COURT: I don't follow you, Mr. Kenney.  
12 This order is predicated on his refusing to answer  
13 questions regarding the robbery of Rocco DiGeorgio outside  
14 the Plaza National Bank.

15 MR. KENNEY: I think as a practical matter  
16 even though the order is limited, it may have the effect  
17 of granting him immunity as to any testimony that he  
18 gives if he is questioned subsequently after the grant  
19 of the immunity, and that is why we suggested doing it  
20 in the way we did.

21 THE COURT: I don't see how you can take that  
22 position.

23 MR. KENNEY: Well, he is going to be granted  
24 immunity as to those facts on the 22nd, and as I under-  
25 stand your Honor, you would then have him questioned as

1 to the facts from January through April 5th?

2 THE COURT: Yes.

3 MR. KENNEY: It seems to me that makes it  
4 necessary for the witness as a matter of law to raise any  
5 objection he wants to as to each question if he should  
6 choose to take the Fifth Amendment. We don't suggest  
7 that he will. We're trying to protect ourselves against  
8 applications that might be made to us from a witness who  
9 is a convicted defendant who could be sent to jail for  
10 life. That is the status we are in. Any subsequent  
11 prosecution that might arise out of these facts which we  
12 don't want to grant immunity to, he would be able to  
13 claim that while he was only granted immunity as to  
14 limited facts of March 22, he is a lay person, he was  
15 unable to determine question by question whether he should  
16 raise his Fifth Amendment or not. Then as a practical  
17 matter I don't think we can limit the order unless we  
18 ask him the questions of March 22 after he has given his  
19 other testimony.  
20

21 Now, if the Court should rule that we can't  
22 question him that way in this case, then I would just like  
23 to have a five minute recess to review that with the office  
24 and then we will resume.

25 THE COURT: It is all right with me. I see no

1 point in breaking this down one to the other. This is an  
2 integral part of your case. I don't see why counsel  
3 should have to cross-examine the man twice.  
4

5 MR. KENNEY: If the government did not grant  
6 him immunity counsel would not be able to cross-examine  
7 him at all on this point. In fact, there would be no  
8 testimony.

9 THE COURT: But you are granting him immunity.  
10 Therefore, it will come out in an orderly fashion. I  
11 think that you might be able to cure it if you want to  
12 bring Mr. Crawford out after Mr. Gold explains to him the  
13 situation. He can still take the Fifth when he comes out  
14 here and say, "I'm not going to answer any questions you  
15 put to me."

16 MR. KENNEY: Yes, he could do that.

17 THE COURT: Now, perhaps Mr. Gold ought to  
18 talk to him and ask him before he comes out here whether  
19 he is willing to answer all questions fully and freely  
20 regarding the events of April 5th, and limiting his Fifth  
21 Amendment claim to the events of March 22. If he is,  
22 then I am now entering an order granting him immunity. If  
23 he testifies under that understanding, I think you have  
24 clarified the situation.

25 MR. GOLD: If I may say, I didn't know until



2 just a few minutes ago that the granting of immunity  
3 extended to certain events on a particular day. I have  
4 not seen this order.

5 THE COURT: I am going to give it to you.

6 MR. GOLD: My position is -- and I am going to  
7 advise him and have advised him -- that he is to assert  
8 his privilege with regard to any question which in any way  
9 touches upon a crime other than the one which is on trial  
10 here, that is to say, the New Jersey events, and anything  
11 that will in any way connect him with the New Jersey event  
12 is something that he should assert his privilege to. I  
13 have told him that. I won't know until after he testifies  
14 whether he fully understood my advice, because he is a lay-  
15 man.

16 THE COURT: I am going to allow you to sit up  
17 here. I think what you ought to do is go in and discuss  
18 with Mr. Crawford what we have agreed to out here with this  
19 order, and then we might bring Mr. Crawford in, if you  
20 want additional conversation directly from Mr. Crawford,  
21 other than Mr. Gold's statement, to say that he clearly  
22 understands what the situation is, because I don't want to  
23 run into his taking the Fifth in front of the jury, which  
24 can create problems.

25 MR. KENNEY: We want to avoid that as well.



1 THE COURT: I think you understand the problem.

2 MR. GOLD: I do, but I think I would be  
3 assisted by Mr. Kenney if he accompanied me.  
4

5 MR. DIRENZO: Now that I have seen the  
6 Peterson letter, I would add to the argument the following  
7 as I read this authorization from the Department of  
8 Justice, which has a stamp date on it, December 7, 1973,  
9 there is a copy of that same letter attached to what  
10 purports to be the original. A copy of that letter has  
11 no date on it. So it would seem to me that whatever date  
12 you find on the letter that presumably came from  
13 Washington, D.C., was put on the original after its arrival  
14 in the United States Attorney's office in New York. That  
15 is number one. I don't know the date, if such is the  
16 fact, on which the Attorney General authorized the confer-  
17 ment of this immunity.

18 Two, as I read the letter of authorization, the  
19 caption is, "United States against Thomas Joseph Carroll,  
20 Robert Rippey, Vincent McCloskey and William McCloskey."  
21 These are the four defendants on trial in this case. If  
22 the immunity was properly conferred in accordance with  
23 6003 or 6002, did the Attorney General of the United  
24 States understand that the immunity was being given in this  
25 case, a case for which this defendant has already pleaded,

1 and I say there is nothing here to indicate the immunity  
2 is for the so-called Secaucus incident.

3  
4 Three, your Honor, the letter is signed pre-  
5 sumably by Henry Peterson, but apparently he didn't sign  
6 it. It is signed, if I read it correctly, Kevin Maroney.

7 Now, if I understood the section correctly, I  
8 think the United States Court at one point pointed out  
9 that in conferring this immunity there has to be a literal  
10 compliance by the government consonant with the statute  
11 before this immunity is granted. I do not know whether the  
12 signature that appears thereon would, in fact, be the  
13 authorized signature within the purview of the statute.

14 THE COURT: Yes, but it is pursuant to Section  
15 28 of the Code of Federal Regulations.

16 MR. DIRENZO: That may well be, your Honor,  
17 but they say that this statute has to be very strictly con-  
18 strued, and in view of the fact that there seems to be  
19 some question about in what case they intend to give him  
20 the immunity, if this is a proper authorization, I say it  
21 is ambiguous to that extent.

22 THE COURT: Do you have the Code of Federal  
23 Regulations?

24 MR. KENNEY: I don't have it here. I will go down and  
25 get it.

1  
2 Your Honor, may I point out for the record that  
3 the letter that has been handed over to your Honor is dated  
4 stamped in the United States Attorney's office on December  
5 10, 1973.

6 THE COURT: Yes, I see that.

7 MR. DIRENZO: It is ironical, your Honor, that the  
8 copy has no date on it at all.

9 THE COURT: I'm not worried about the copy.

10 MR. DIRENZO: Maybe I am extra cautious when I  
11 read these documents.

12 MR. KENNEY: Your Honor, may I be excused to go  
13 in and see Mr. Gold?

14 THE COURT: Yes, we will have a short recess.

15 (Short recess.)

16 THE COURT: Yes, Mr. Kenney?

17 Mr. Gold?

18 MR. GOLD: Your Honor, I have studied the order  
19 now and I believe that we are fully covered as to any fact  
20 that may be elicited if it relates or is found to relate to  
21 the New Jersey incident, and so I have advised my client that  
22 the order having been signed by your Honor, he can freely  
23 answer questions relating to the New Jersey incident without  
24 asserting his privilege, knowing that he is covered by the  
25 statute, and he is prepared to waive his privilege with respect

1  
2 to the April 5th incident.

3 MR. KENNEY: If I understood your Honor's  
4 perhaps not suggestion, but sort of suggestion before the  
5 recess, it was that we call Chester Crawford in and with  
6 his lawyer here ask him if he will waive his Fifth Amendment  
7 privilege with regard to any fact he is asked to testify  
8 about related to this case with the exception of facts  
9 related to the March 22 robbery, and given that waiver, we  
10 would then ask the Court to sign the order?

11 THE COURT: I have already signed it.

12 MR. KENNEY: Or we can notify him that immunity  
13 is conferred upon him and we cross-examine him entirely at  
14 that point?

15 THE COURT: I think that is what counsel would  
16 like? Is that right? You don't want this broken up,  
17 Mr. DiRenzo?

18 MR. DIRENZO: At this point I am so confused --

19 THE COURT: There is nothing to be confused  
20 about. An issue has been presented as to this witness  
21 taking the Fifth Amendment on matters outside the scope of  
22 the existing indictment, and I granted him that immunity.  
23 Now you have no standing to object to that granting of  
24 immunity.

25 MR. DIRENZO: To that I disagree just for the

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record.

THE COURT: I understand that you and Mr. Martin and Mr. Hafetz and Mr. Hopper have objected to the granting of the immunity. I have overruled that objection. The statute is perfectly clear. I must grant the immunity when it is presented to me on the authority of the United States and the underlying documents. Now all I want to do is to make sure that the witness understands what is happening. Mr. Gold, his attorney, was sent in to tell him that privately, and then Mr. Kenney went in with him to talk to him, because I want the witness to understand. This is of no concern of yours at this point. All I am going to do is to ask Mr. Crawford to come out and have Mr. Gold explain to him on the record what is happening, and that is what Mr. Kenney wants.

MR. KENNEY: I have this one further problem which I mentioned earlier. I would like to have just five minutes to review this with our office to determine if we still want to request the immunity granted.

THE COURT: Why did you give it to me if you don't want to do it?

MR. KENNEY: I handed it to the Clerk so you could see the documents. You had requested them. I delivered a copy to your chambers during the lunch period,

1  
2 but I didn't have the order signed by Mr. Curran at that  
3 time.

4 THE COURT: I understand this. I assumed from  
5 yesterday's conversation and the fact that you delivered the  
6 documents to me during lunch that you wanted immunity con-  
7 ferred on this witness.

8 MR. KENNEY: We do, but we have some serious  
9 reservations as to whether even under the method that has  
10 been adopted and that we will use, we would not be granting  
11 general immunity to him. I just want to make sure we don't  
12 do that without the permission of the United States Attorney.

13 THE COURT: Well, there's no point in keeping  
14 the jury waiting while this is being resolved.

15 Would you tell the jury, Jimmy, that they are  
16 excused until tomorrow morning at 10:00 o'clock, that the  
17 Court is still in session with the attorneys on some problems  
18 of procedure, and that there is no need for them to sit  
19 around while we resolve that.

20 Let me see the Code of Federal Regulations.

21 MR. KENNEY: This is not the latest volume, I  
22 want to make clear. That is the only one available.

23 (Continued on page 186.)  
24  
25

1  
2 THE COURT: The code of Federal Regulations  
3 sustains the grant of authority to Mr. Kevin Maroney,  
4 Deputy Assistant Attorney-General. I will read it into  
5 the record for you, Mr. Direnzo.

6 MR. DIRENZO: All right, your Honor.

7 THE COURT: Section 0.178(a) of the Code of  
8 Federal Regulations reads as follows:

9 The Assistant Attorney-General in charge of the  
10 criminal division and the Assistant Attorney-Generals  
11 designated in 0.175(b) are authorized to redelegate the  
12 authority delegated by this subpart to their respective  
13 Deputy Attorney-Generals to be exercised solely during  
14 the absence of such Assistant Attorney-Generals from the  
15 City of Washington.

16 The signature reads Henry E. Petersen, by Kevin F.  
17 Maroney, Deputy Assistant Attorney-General, pursuant to  
18 28 CFR Section 0.178.

19 MR. DIRENZO: Can I take the liberty of asking  
20 your Honor when that was enacted?

21 I am sure we are in the time period.

22 THE COURT: It says January 1, 1972 issue. When  
23 the section itself was enacted, I can't tell you.

24 It seems to indicate December 23, 1970, issued  
25 pursuant, among other sections, Section 6003(b) of Title 18.

1  
2 All right. Give this back to Mr. Kenney.

3 We will have a five-minute recess.

4 MR. HOPPER: Your Honor, may I approach the  
5 bench with counsel?

6 THE COURT: We don't have Mr. Kenney here.  
7 He will be back in a few minutes.

8 (Recess.)

9 (In open court; jury not present.)

10 THE COURT: Yes, Mr. Kenney.

11 MR. KENNEY: Your Honor, it is an acceptable  
12 way of proceeding with the Government to have Mr. Crawford  
13 in with his lawyer and ask him to waive his Fifth  
14 Amendment privilege with regard to the matters within  
15 the frame of the indictment of this case and to reserve  
16 his Fifth Amendment with regard to the robbery on March 22nd  
17 and then have the Court inform him that he has been granted  
18 immunity as to that.

19 MR. GOLD: I just have one proviso and I have  
20 advised my client to reserve his privilege as to all  
21 matters other than the matter on trial within the framework  
22 of this indictment. Then I understand your Honor is going  
23 to inform him that you have signed an order of immunity  
24 with respect to the New Jersey incident and, therefore,  
25 he is required to answer those questions, but he will



nevertheless reserve his privilege with respect to incidents other than the two I have just mentioned, because while --

THE COURT: I understand Mr. Kenney accepts that interpretation.

Is that true?

MR. KENNEY: Yes, your Honor.

THE COURT: It may be that the defendants may ask questions.

MR. GOLD: Exactly, your Honor.

THE COURT: And you will be here to tell your client that he has a right to assert the Fifth Amendment privilege. If they want to force him to assert a Fifth Amendment privilege in front of the jury, that is their tactical problem.

MR. GOLD: Because they may touch upon a matter --

THE COURT: Absolutely true.

MR. DIRENZO: Just so that we get the rules and we each understand them, your Honor, it has always been my maybe inadequate impression that with reference to the assertion of Fifth Amendment right, the procedure has been that the Court instructs the witness that he has that right available to him, he does it on one occasion -- the Court does it on one occasion, and from that point on

1  
2 it is for the witness himself to assert it rather than  
3 have somebody prodding him, telling him he can, or  
4 objecting on the ground that it would constitute a  
5 possible Fifth Amendment --

6 THE COURT: I don't proceed that way, Mr.  
7 Diranzo. I have had this problem in the past and I have  
8 proceeded this way, just the way we are proceeding now.

9 MR. DIRENZO: I don't challenge --

10 THE COURT: Because I don't think it is fair  
11 to a witness to be on the stand and at his peril keep  
12 asserting the right or not asserting the right, and a  
13 competent attorney is much better aid to that witness  
14 who may be facing a possible incarceration on something  
15 else that he wasn't thinking of, and that's why I have  
16 his counsel present.

17 I have done this before.

18 MR. DIRENZO: I sincerely hope in some of the  
19 matters that I have previously had that I had a Judge  
20 Metzner sitting on the bench and not some of the other  
21 judges that I did have.

22 THE COURT: That is awfully nice of you.

23 I have done this and I think it is the only way  
24 to handle it. I don't like -- certainly, I will not let  
25 the Government put them on the stand if they are going to

1  
2 take the Fifth Amendment, because that is obviously  
3 antagonistic to the interests of your clients, the  
4 defendants. To the extent I do it, I do it in the absence  
5 of the jury the way we are proceeding now.

6 If, inadvertently, you might touch upon some  
7 areas on cross-examination, this I can't control, you see,  
8 because I don't know the facts of this case, except from  
9 what I hear from this witness stand.

10 All right, Mr. Gold?

11 MR. GOLD: Yes, sir.

12 THE COURT: All right.

13 Bring the witness in, please.

14 (Chester Crawford enters the courtroom.)

15 THE COURT: You may be seated, Mr. Crawford.

16 Mr. Crawford, we have asked you to come in the  
17 absence of the jury so that we could clarify for the  
18 record the understanding regarding the assertion of your  
19 Fifth Amendment privilege, and that is why I have Mr.  
20 Gold, your attorney, here to advise you.

21 I think the way to proceed is for Mr. Gold to  
22 tell you here in open court what I understand he told  
22 you in the witness room behind the courtroom before,  
24 what is involved here, so that you know where you are  
25 going when you testify.

1  
2 DEFENDANT CRAWFORD: Yes.

3 THE COURT: Would you tell your client, Mr.  
4 Gold?

5 MR. GOLD: Yes, your Honor.

6 Mr. Crawford, as a result of our discussions,  
7 I believe you and I have agreed that it is in your  
8 interest to waive or give up your Fifth Amendment privilege  
9 with respect to questions and answers exclusively related  
10 to the indictment on trial in which you are a defendant,  
11 that is to say, that you are not going to assert your  
12 privilege with respect to matters exclusively related  
13 to the April 5th incident.

14 However, I believe you and I have agreed that  
15 you reserve and do not give up your right to assert your  
16 Fifth Amendment privilege with respect to any other  
17 matters whatever which you feel may tend to incriminate  
18 you.

19 Now, I understand that the Judge has signed an  
20 order granting you immunity from the use of any testimony  
21 which you may give which relates in any way to an  
22 incident in New Jersey in March.

23 THE COURT: Can you be specific with that, Mr.  
24 Gold?

25 MR. GOLD: That would be a robbery which occurred



on March 22nd, I believe, in I believe Secaucus.

THE COURT: Outside the Plaza National Bank.

MR. GOLD: Outside the Plaza National Bank.

And the order, as I understand it, would prevent any prosecutorial authority from using your answers to prosecute you for that crime and, therefore, you need not assert your privilege to questions exclusively related to either the April 5th incident or this New Jersey incident, but you reserve the right to assert your privilege with respect to any other matters which may tend to incriminate you, and I will be here to advise you on that score.

THE COURT: Do you understand that, Mr. Crawford?

DEFENDANT CRAWFORD: Yes, I understand that.

THE COURT: Is that agreeable to you, Mr. Kenney?

MR. KENNEY: Yes, your Honor.

THE COURT: All right.

To complete it, I show you my signature on the order which grants you immunity and directs you to answer any questions that may be put to you by Mr. Kenney regarding the Secaucus, New Jersey affair of March 22nd.

DEFENDANT CRAWFORD: Yes, sir.

THE COURT: We will adjourn until tomorrow morning at 10:00 o'clock.

MR. GOLD: Yes, your Honor.

1  
2 THE COURT: Mr. Gold will be here with you, Mr.  
3 Crawford.

4 MR. KENNEY: Your Honor, if I may, the Government

5 THE COURT: The witness is excused.

6 (Chester Crawford left the courtroom.)

7 MR. KENNEY: The Government intends to follow  
8 a similar proceeding with regard to other witnesses who  
9 will be called to testify and with the Court's leave I  
10 will call the attorneys who have been representing those  
11 witnesses.

12 THE COURT: I have seen some of them walk in  
13 and out of the courtroom today.

14 MR. KENNEY: They have been advising their clients  
15 in a similar way, but now that we have reached --

16 THE COURT: Fine. We will follow the same pro-  
17 cedure.

18 MR. KENNEY: That's correct.

19 THE COURT: I wish you would notify them in  
20 advance, show them the order that you are going to ask me  
21 to sign so we don't waste the time that we had to waste  
22 this afternoon on setting up the procedures regarding Mr.  
23 Crawford.

24 MR. KENNEY: Yes, your Honor, we will do it.

25 THE COURT: Mr. Hopper, you had an application.

1  
2 MR. HOPPER: Yes, your Honor.

3 May I approach the bench?

4 THE COURT: Certainly.

5 (At the bench.)

6 MR. HOPPER: I don't know whether your Honor can  
7 give me any relief here or not.

8 I have a closing scheduled for 11:30 tomorrow  
9 at the Midatlantic Bank at Newark. It is a matter where  
10 we obtained an option some two montsh ago to purchase the  
11 stock of a company that is engaged in distilling contam-  
12 inated oils for resale.

13 I understand from my clients that since the  
14 energy crisis, the people we are buying from maybe think  
15 they could have gotten a whole lot more money. Our time  
16 on the option expires December 27th.

17 I explained to my people that it really is impos-  
18 sible to have the whole courtroom of people inconvenienced  
19 because of this, but I said I would ask your Honor if I  
20 could get any relief, maybe by way of a little shorter or  
21 earlier and to the day tomorrow and I may be able to push  
22 the bank to extend that closing to the end of the year.

23 THE COURT: I think we are running behind schedule,  
24 are we not, Mr. Kenney, on this trial?

25 MR. KENNEY: Yes.

1  
2 THE COURT: We are pretty much behind. You  
3 are in a murder trial here and I certainly want to get  
4 this finished --

5 MR. HOPPER: I can understand that.

6 THE COURT: -- before Christmas.

7 We are now at the end of the second day and  
8 we are only starting to get into the detail of it. I  
9 am afraid I can't grant it.

10 MR. HOPPER: All right. Thank you.

11 THE COURT: All right.

12 At the present posture, when do you think you  
13 will be finished with your case?

14 MR. KENNEY: I would hope that we would have no  
15 more than two days of testimony.

16 THE COURT: Wednesday and Thursday.

17 MR. KENNEY: Thursday and perhaps a little bit  
18 of Friday morning.

19 (Adjournment taken to December 12, 1973 at 10:00  
20 o'clock a.m.)  
21  
22  
23  
24  
25



WITNESS INDEX

<u>Name</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
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UNITED STATES OF AMERICA

vs.

73 Cr. 855

THOMAS J. CARROLL, et al.

-and-

UNITED STATES OF AMERICA

vs.

73 Cr. 972

WILLIAM McCLOSKEY, et ano.

December 12, 1973  
10 a.m.

(In the absence of the jury.)

(Mr. Jay Gold also present in the courtroom.)

THE COURT: Before we start, Mr. Martin has submitted this morning a written motion requesting that I exclude from evidence the testimony regarding the alleged armed robbery of one Rocco DiGeorgio, outside the Plaza National Bank in Secaucus.

That motion is denied on the authority of two cases in the Court of Appeals in this Circuit: U.S. v. Stadter, 333 F.2d, Second Circuit, 1964, and United States versus Miller, 478 F.2d 1315, Second Circuit, 1973.

Bring the jury in.

MR. DIRENZO: Before your Honor brings the jury in, at this time, if your Honor please, I have an application to make. I have been reading the indictment, and in examining

the indictment apparently there seems to be two theories in connection with the homicide, the murder charge that the government is proceeding with. One would be a homicide committed with malice aforethought; the other, the perpetration of a robbery.

THE COURT: I gather the latter is their theory.

MR. DIRENZO: My application at this time was going to be to ask your Honor to direct the United States Attorney to elect on what portion of the statute he is proceeding, so that we can confine the issue to one of a felony murder, so to speak, and the felony happens to be robbery in this case, and the crimes designated as specifically set forth in the statute.

At this time I think it is proper for us, for the defense, to have an election made by the United States Attorney so we can define the issue.

THE COURT: Mr. Kenney?

MR. KENNEY: It is our opinion, your Honor, that if the Court would leave out the element of malice aforethought in charging the jury that it would be error, and the reason is that is the way the federal statute is drafted. I don't think it is termed a felony murder in the common law sense.

THE COURT: "Malicious" appears in the first

1 sentence, and it has to be charged whether he proceeds on  
2 premeditation or not. So I have to overrule your objection.

3  
4 MR. KENNEY: We are really proceeding on the one  
5 theory, which is the second one.

6 THE COURT: He must prove maliciousness in con-  
7 junction with the felony because of the peculiar wording of  
8 the federal statute.

9 MR. DIRENZO: I have noted my application.

10 THE COURT: Frankly, I was worried about that  
11 myself, but it is perfectly clear that even on the felony  
12 charge there has to be a reference to maliciousness.

13 MR. DIRENZO: In reading it I got the feeling it  
14 was not in the conjunctive, but in the disjunctive, the first  
15 portion of it.

16 THE COURT: That is true as far as the second  
17 sentence is concerned, but the first sentence is the word  
18 "malicious" and doesn't limit it just to premeditation.  
19 There is no doubt that there is a logical approach that can  
20 be made that the maliciousness is part of premeditation; it  
21 doesn't seem to have any part of felony murder. But it does  
22 appear in the sentence all by itself without regard to the  
23 other two, and the cases indicated have to be charged.

24 MR. KENNEY: I'm just going to say we have seen  
25 some cases in our research, your Honor, that indicated that



premeditation and malice aforethought were considered as separate elements.

THE COURT: That is the problem, and that is Mr. Durenzo's approach. As you read the statute and you read the words malice and premeditation, you think they merge, that they are the same thing, but actually under the way the federal statute is drawn I think even in felony murder you have to charge the jury on maliciousness.

MR. DURENZO: I have made my point. Thank you, your Honor.

There was one other thought that I wanted to bring to the Court's attention. Chester Crawford one time was represented by Mr. John McGillicuddy, who is in the same office I am in, and I started to think about it last night. I didn't give it much attention before and I didn't recall whether John McGillicuddy might have filed my name on a notice of appearance. I found out from Chester Crawford that that never happened. I didn't know anything about the case, except he was charged with the commission of a crime in the Eastern District Court, and I asked for permission to talk to Mr. Crawford this morning.

Mr. Kenney and I did speak to him together. I also spoke to Mr. Gold, his attorney, and Crawford said that I definitely was not his attorney. So I wanted that in the

record, so if there was any question about privilege or anything like that, I didn't want to be placed in an embarrassing position.

THE COURT: Thank you, Mr. Direnzo.

MR. KENNEY: I was present during that conversation.

MR. DIRENZO: Yes, Mr. Kenney was present.

THE COURT: Bring the jury in.

(Continued on page 202.)

1           MR. KENNEY: Your Honor, may I call the Court's  
2           attention to the fact that several -- many, in fact, of  
3           the witnesses in this case are in jail, and therefore  
4           have to be brought from downstairs by the marshals.  
5           I call your attention to the fact for at least two reasons:  
6           First, so that if perhaps the questioning should fall  
7           at the time of the recess, it might be expedient to have  
8           the recess before the next witness so we can be sure  
9           that he's actually been brought up by the marshals and  
10          ready to come in; and, secondly, to ask to have access  
11          to the Court's telephone in Court to be checking with the  
12          lockup to see that it's speeded up.

13           THE COURT: I don't get the first point.

14           MR. KENNEY: The first witness is Chester  
15          Crawford. The second witness is going to be another  
16          fellow who is incarcerated. He is not up here now.  
17          So if Mr. Crawford's testimony should reach the morning  
18          recess, perhaps if we have the recess, I'd be able to get  
19          Mr. Boyd then or make sure he's here then.

20           THE COURT: All right.

21           MR. KENNEY: We have to, naturally, your Honor,  
22          have a marshal sitting with each witness.

23           THE COURT: Right.

24          (Jury present.)  
25

MR. KENNEY: Chester Crawford.

C H E S T E R C R A W F O R D, called as  
a witness by the Government, being first duly sworn,  
testified as follows:

THE COURT: You may proceed.

DIRECT EXAMINATION

BY MR. KENNEY:

Q Mr. Crawford, would you tell the Court and the  
jury what your home address is? Where are you from?

A 112-01 176th Street, St. Albans.

Q And where is St. Albans?

A In Queens.

Q That is out on Long Island, is that right?

A Yes, it's in the Jamaica section.

Q Is it a fact that you pleaded guilty to part  
of the indictment in this case?

A Yes, sir.

Q And would you tell us what you pleaded guilty to?

A Second-degree murder.

Q Do you know what the maximum penalty for that  
would be?

A Life.

Q In return for your plea of guilty in this case,  
have you been promised anything by the Government?



A They promised that at sentence they would drop the other two charges, indictments, in the case.

Q What do you understand those to be?

A Conspiracy and attempted robbery.

Q And did the Government promise you anything else?

A Yes, they said they would tell the Judge it was a very serious crime and carried a maximum, a large sentence.

Q Did the Government tell you that they would call your cooperation to the attention of the sentencing Judge?

A Yes, yes, they told me that, too.

Q Have you been convicted of any other crime besides this one?

A Yes, hijacking in the Southern District.

Q Do you mean in this courthouse?

A In this courthouse.

Q When was that?

A In July, I was convicted here and I got ten years.

Q Is that July 1973?

A July 1973.

Q And have you been sentenced on that crime?

A Yes, I was sentenced.

Q What was your sentence?

A      **Ten years.**

Q Are you presently serving that sentence?

A Yes, sir.

Q Subsequent to that where you convicted of any other crime?

A No. I had a charge in the Eastern District, and I took a plea; after I was convicted in this case, I took a plea in the Eastern District.

Q When you say you took a plea, does that mean that you pled guilty?

A I pled guilty to conspiracy, to possession, and the Judge sentenced me after I was sentenced in this District.

Q What were you charged with in the Eastern District?

A Hijacking, conspiracy and possession of stolen property.

Q Have you been sentenced on that offense?

A Yes.

Q What was your sentence?

A      Three years.

Q Was that sentence to run concurrently with your ten-year sentence?

A Yes.

Q Does that mean that you will serve those two sentences at the same time?

A Right.

Q Now, at the time you pleaded guilty in the Eastern District, had you agreed to testify in this case?

A No.

Q Had you agreed to cooperate with the Government in any sense?

A No.

Q Do you have any outstanding charges or indictments against you at this time?

A I have one in New Jersey.

Q And would you tell us what that charge is?

A It's conspiracy, hijacking and possession.

Q Has anything happened to that, or is it presently pending?

A It's presently pending.

Q Do you have any agreement with the United States Government or with anyone here in this courthouse or with anyone in New Jersey as to what your sentence will be on that offense?

A No, sir.

Q Have you been convicted of any other crimes other than the ones you have told us about?

2 A No, sir.

3 Q With regard to the facts related to the crime  
4 to which you pleaded guilty in this case, and directing  
5 your attention to January and February of 1973, did you  
6 do anything during that period of time in connection with  
7 this mail truck?

8 A Yes, sir.

9 MR. DIRENZO: Objected to, if your Honor please;  
10 not within the period of the indictment.

11 THE COURT: Overruled.

12 Q Would you answer the question, please?

13 A Yes, sir.

14 Q Would you tell us what you did?

15 A In January, when I first knew about this crime,  
16 I met Carlton Boyd, James Dixon and Leon at --

17 THE COURT: "Leon"?

18 Q Do you know Leon's last name?

19 A No, sir.

20 THE COURT: Go ahead.

21 A I met them at South Street and Maiden Lane.

22 MR. DIRENZO: With your Honor's permission,  
23 may we have a continuing line of objection to this  
24 testimony, rather than interrupt?

25 THE COURT: You do have.



MR. DIRENZO: Thank you.

THE COURT: Go ahead.

Q Would you go ahead, Mr. Crawford?

A I met them down there. I was looking for my car; I was on trial in here, and they said my car would be along shortly, because I had lent Carlton Boyd my car during the day, and I learned he was down there, and I went down there looking for him and I found him, and he told me that Carroll would bring my car along shortly.

MR. DIRENZO: Objected to. Move that that portion be stricken.

THE COURT: Is Mr. Boyd -- is that the name?

MR. KENNEY: That is correct.

THE COURT: Is he going to testify?

MR. KENNEY: Yes, he is.

THE COURT: Objection overruled.

Q Mr. Crawford, would you tell us only who you saw and what you did yourself at that period of time, January and February '73, in connection with this case?

A I met Carlton Boyd and James Dixon and Leon at Maiden Lane and South Street. At that time I was looking for my car. They didn't show up, so Billy McCloskey came by and he took me home. That was all I

did that day.

About two weeks later, I met Carlton Boyd, James Dixon and Leon and Tommy Carroll, Mike McCloskey and Billy at Minden Lane and South Street. I don't know the date. And they talked about it, and the preparation to do this job.

Q Tell us, if you can recall, what was said?

A I can't recall what was said.

Q Will you tell us then what else you did?

A They made preparation to do this job, but they never got it done.

MR. HOPPER: I am going to move to exclude his conclusion unless he can tell us what the parties said.

THE COURT: He says he can't tell you, but that was the subject of the conversation.

Objection is overruled.

MR. DERENZO: May I object, your Honor, at this time and ask that that particular testimony be stricken because at this point we are being denied the right to cross, not knowing what the conversations were.

THE COURT: He can tell you what they discussed. He was part of the discussion. You can cross-examine him.

The objection is overruled.

Q Mr. Crawford, would you look about the courtroom

and see if you can identify the men that you mentioned that you met at Maiden Lane and South Street?

A Yes. Billy McCloskey, Tommy Carroll and Mike McCloskey.

Q And when you say Billy McCloskey, will you tell us just who you are referring to?

A The gentleman over there (pointing).

THE COURT: What color tie is he wearing?

THE WITNESS: He has a red tie on, wine tie.

THE COURT: Is that identification admitted, Mr. Hopper?

MR. HOPPER: Yes.

Q When you talk about Mr. Carroll, will you tell us who you are referring to?

A The gentleman with the beard there.

MR. DIRENZO: So conceded, your Honor.

Q When you talk about Mike McCloskey, will you tell us who you are referring to?

A The gentleman with the army fatigues on.

THE COURT: Identification conceded, Mr. Martin?

MR. MARTIN: That is Mr. McCloskey, Mr. Mike McCloskey.

Q After the second meeting or second time that you went to Maiden Lane and South Street, did you do any-



thing else in connection with this case?

A Yes. About a week later they decided to do -- (3)  
again, but they didn't have any car.

MR. DIRENZO: Objected to, your Honor.

THE COURT: I don't know -- objection sustained.

Q When you say "they," will you tell us --

MR. KENNEY: Strike that, your Honor.

Q Would you just tell us what you yourself did,  
who else was there, if anyone, and what was said?

A I met Billy McCloskey and Tommy Carroll and  
James Dixon and Carlton Boyd at Maiden Lane maybe a week (4)  
later, and they had a car then they were going to use  
to do the job with, a Buick, and they didn't do it that  
night because they was too late to do it. They was not  
prepared to do it, but it was too late to do it and they  
left the car in the garage down there, and they went  
home, everybody went home.

MR. DIRENZO: For the sake of protecting the  
record, if your Honor please --

THE COURT: I don't understand what was meant  
by "do the job then," Mr. Kenney. You'd better explore that.

Q Mr. Crawford, would you tell us what you mean  
by "do the job"?

A Well, we went down there the third time. They



didn't have a car because they had lost all the equipment, the car which they was going to stop the mail truck and hijack the mail truck. The third time they went, they had the car to stop the mail truck, and everybody was ready, and the time they found the mail truck and got in position, the mail truck was gone. It was too late. So they parked the car in the garage and left it.

Sooner or later after that, Carlton Boyd got arrested and they never did attempt it any more, not then.

MR. DIRENZO: I move that the answer be stricken, your Honor.

THE COURT: Overruled.

MR. DIRENZO: Note my motion for a mistrial, your Honor.

THE COURT: Denied.

Q Directing your attention now to the month of March 1973 and specifically to the middle of that month, on or about the 18th of March, did you do anything at that time in connection with this case?

A Yes, at that time I called Rippy in Washington and I had a conversation with him over the phone.

Q Now, would you tell us, to the best of your recollection, what you said in that conversation and what Mr. Rippy said?

MR. MARTIN: I am going to object.

*The Court*  
MR. DIRENZO: I will take it subject to connection under the conspiracy count.

A Well, I asked Rippy did he have any friends down there. He told me yes, and he told me he would send a fellow up there to talk to me, and he asked me what it concerned, and we didn't discuss the details over the phone, so he said, "Well, I will send up a fellow," Paul, my brother, would come with him, and I would talk to him.

THE COURT: That Paul, you say, is the brother of Rippy; did I understand that correctly?

Q Would you tell us who Paul is?

A Paul is my brother.

THE COURT: Your brother?

THE WITNESS: Yes, Paul Crawford, which is my brother, which came with the fellow up here.

THE COURT: So your brother is in Washington, D. C., too?

THE WITNESS: Yes, sir.

Q Did there come a time when you met Paul subsequent to that?

A Yes, I met Paul -- that was on a Sunday. I met him Monday afternoon, on the 20th, at South 3rd

Street and Havemeyer, Williamsburg section in Brooklyn.

Q What month are you referring to?

A That is in March.

Q Was there anyone with him at that time?

A Yes, sir, Terry.

THE COURT: Who?

THE WITNESS: Terry.

THE COURT: Terry?

THE WITNESS: Yes, sir.

MR. KENNEY: He's saying Terry, I believe.

THE COURT: That is right, he is saying Terry.

Q Would you tell us Terry's last name, if you know it?

A I am not sure of Terry's last name.

Q Is Terry black or white?

A He's black.

Q Would you describe him for us?

A About 6 fee tall, heavy, had a wide Afro then.

Q Did you have a conversation on South 3rd Street and Havemeyer in Brooklyn that day?

A Yes. We met and we talked and --

MR. MARTIN: I am going to object, if your Honor please.

THE COURT: I will take it on the conspiracy

charge, subject to connection.

A We talked and he told me that Rippy had sent him up here, and he wanted to talk, and he come to see what it was all about, and what he had to do, and I says, "Well, I will have to let you meet the people."

He says, well, he couldn't do it because he didn't have his other friend with him, he didn't call any name at the time. So I talked to him a while --

MR. HAFETZ: I'm sorry, I can't hear that, your Honor.

THE COURT: Will you do it a little slower, please?

Q Try to speak up, Mr. Crawford.

A Okay.

I met Paul Crawford and Terry at South 3rd Street and Havemeyer, Williamsburg section of Brooklyn, at 2:00 or 3:00 o'clock, between 3:00 or 4:00, somewhere in that neighborhood, and Terry told me that Rippy had sent him, he was a friend of Rippy's, and he came to see what he had to do.

So I told him, I says, "Well, I will let you meet the people and they'll run it down to you."

He says, "Okay," but he said he had a friend was coming up here, but he'll come the next day or the



next day.

So we waited around there awhile, then I made a telephone call to Wall's Tavern.

Q Will you tell us where Wall's Tavern is?

A It's in, I think it's in North Bergen. It's called Five Corners, in New Jersey.

Q Who did you call at Wall's Tavern?

A Well, I called to see if it was Tommy Carroll or Jack or Mike.

MR. MARTIN: I'm going to object.

THE COURT: Overruled.

Q Did you speak to any one of those three people at Wall's Tavern?

A Not at that time. I called back later and I got hold of Jack.

Q Would you tell us what you did after you made the telephone call on March 20 and didn't reach anyone at Wall's Tavern?

A Well, we took a ride; we parked the car, and we left and we went across Atlantic through to lower Manhattan, and we rode around a little while, and then we went back to Havemeyer Street.

Q What did you do when you returned to Havemeyer Street?

A I didn't do anything. Paul Crawford and Terry got in this car and went to a motel.

MR. MARTIN: I'm going to object and ask that that be stricken.

THE COURT: Overruled.

Q During the period of time you were driving around

in lower Manhattan was there anyone in the car with you?

A Yes, Terry and Paul Crawford and myself.

Q And when you turned around to Havenmeyer Street they got out of your car?

A They got out of my car and they got in their own.

Q After they got out of your car what was the next thing you did that day?

A I went home.

Q Did you do anything else that day in connection with this case?

A Yes, I made a telephone call to New Jersey to see was Carroll there, to Mike Wall's, and Carroll still wasn't there, but I finally got him later and explained it to him; he said he was going to court then; he said he would see me the next day.

MR. DIRENZO: I object to that and move for a mistrial.

THE COURT: Mr. Carroll's conversation with the witness?

MR. DIRENZO: Is that part of the conversation?

THE COURT: That is what he said.

(Testimony read.)

MR. DIRENZO: I have an objection.

THE COURT: To this specific answer?

MR. DIRENZO: As far as the rule of evidence is concerned to that particular answer I would have to agree with your Honor.

Q When you say you finally got him later, whom are you referring to?

A I finally got Carroll later that afternoon, that night, and I spoke to him. He said he had to go to court the next day and he would talk to me after he got out of court. He would see me later in the afternoon.

Q Was that conversation in person or on the telephone?

A It was on the telephone.

Q Now, after that conversation did you do anything else on the 20th? The first day that you met Terry?

A No, sir, I went home.

Q What was the next time that you did something in connection with this?

A The next day about 3:00 o'clock when I got off from work I met Terry, Geoffrey and Paul Crawford on South Third Street and Havemeyer in the Williamsburg section of Brooklyn.

Q Who is Geoffrey? Do you know his last name?

A Well, I would rather not say because I might get it confused with Myers. All I called him was by his first

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pmd.

MR. DIRENZO: Your Honor --

THE COURT: Go a little slower, so Mr. Drenzo can hear you.

Q Do you know Geoffrey by any other name besides Geoffrey?

A All I called him was Geoffrey.

Q Tell us what he looks like.

A He is very heavy, he has his head shaved now; he is about six feet tall.

Q Is he black or white?

A Black.

Q Did you have a conversation at that time?

A Yes. Terry introduced and he says, "This is Geoffrey, a friend of mine from Washington." And I says, "Okay."

So we sat around and talked for about an hour. Then I called Wall's Tavern in Jersey, which is North Bergen, and I was looking for Carroll. I got Jack. So he told me to call back later. I waited maybe a half an hour or 45 minutes, and I called back later.

Q Would you tell us who Jack is?

A Well, I learned later Jack's name is John Turner.

Q When was the first time you met Jack?



1 took a look at them, then we went up there.

2 Q While you were having this conversation, was  
3 this conversation inside the diner?

4 A Inside the diner.

5 Q Was anyone else present at this conversation  
6 besides you and Carroll?

7 A Well, we were sitting on the stools, Carroll,  
8 myself, Terry and Geoffrey and Paul Crawford.

9 Q Did there come a time when you left this diner?

10 A Yes, we left this diner and we drove to Wall's  
11 Tavern.

12 Q When you got to Wall's Tavern will you tell us  
13 what you did?

14 A Well, me and Geoffrey and Terry went inside --  
15 no -- me and Terry and Carroll went inside, and we was in  
16 there a couple of minutes, and then we discovered we left  
17 Geoffrey and Paul outside. So we went outside and got them  
18 and brought them in, and they sat at the bar, and me and  
19 Carroll and Terry went in a small room off the bar and was  
20 talking. Mike McCloskey was there and Jack, the four of us.

21 Q What was said, if you can recall, in the conver-  
22 sation in the small room off the bar?

23 A Well, first they discussed a payroll robbery  
24 which --  
25

2 MR. DIRENZO: Objection.

3 THE COURT: Overruled.

4 A (continuing) First they started to talk about  
5 a payroll robbery that Jack knew about where he used to  
6 work.

7 MR. HOPPER: I'm going to object to the form of  
8 his answer, "They discussed." May we have to the best of  
9 the witness' best recollection what was said.

10 Q Yes, will you tell us, Mr. Crawford, who said  
11 these things?

12 MR. DIRENZO: I move for a mistrial.

13 THE COURT: Denied.

14 When you say "they discussed the payroll"  
15 robbery," it would be best if you can recall for us exactly  
16 which participant said what.

17 THE WITNESS: We went inside in the room off the  
18 bar, myself, Terry, Carroll and Mike and Jack; so then we  
19 started to talk about a job, Carroll and myself and Mike and  
20 Jack. So he says, "Well," --

21 THE COURT: Who is "he"?

22 THE WITNESS: Tommy Carroll, Mike McCloskey and  
23 Jack and myself and Terry, they started to discuss, started  
24 to talk about things that was around to do. So he says,  
25 "Well, we have a payroll job which Jack knows something about



1 where he used to work." That is what Carroll said. Then  
2 Carroll said he has got to go to court the next day. He  
3 says, "Mike and Jack will be on that job and you will see  
4 how everything is."

5  
6 So a few more words was said. I don't recall  
7 the exact words but they said, "Okay." They agreed to do  
8 that. Terry agreed that is what they will do.

9 MR. MARTIN: Objection.

10 Q Tell us the best you can recall what Terry said,  
11 and try not to say "We agreed to do," just what you recall  
12 was said.

13 A Terry said, "Okay." Then Carroll says, "Well,  
14 I would like to keep them over here tonight." Then I says,  
15 "Where?" Then Carroll said to me, "Take them to the Lincoln  
16 Motel, Lincoln Tunnel Motel," which is about five or six  
17 blocks away. And I took Paul, Terry and Geoffrey to the  
18 Lincoln Motel. And they stayed there that night. And  
19 Carroll says, "Make sure you get over here early in the  
20 morning and meet Mike McCloskey and Jack at Idice's," which  
21 is a bar not far from there."

22 So I took them to the motel and left them and I  
23 went home.

24 Q Did all three of them stay at the motel that  
25 night?

A Yes, Paul Crawford, Geoffrey and Terry.

Q I direct your attention to the next day, the 22nd of March, 1973. Can you tell us what you did on that day?

A On that day I came to New Jersey, to the Lincoln Hotel, where Paul and Geoffrey and Terry were staying. About a quarter to eight they came out and they got in the cars and we drove up to Iodyce's not far away.

I met Mike McCloskey and Jack, and we waited there a while and they said, "We will go take a look at it about 9:00 o'clock." That meant the payroll job at the bank, the messenger.

Then about 9:00 o'clock we went to Secaucus, where they have a trailer parked on the lot, and we sit there until the fellow came along going to the bank to pick up the payroll.

Q Who was sitting there at the lot, please?

A Myself, Terry, Geoffrey, and Paul Crawford, Mike McCloskey and Jack.

Q Will you tell us where you were sitting?

A We were parked on this lot; it is a vacant lot; there is a trailer there, and in my car was Geoffrey and Terry and Paul and myself, and in Mike's car was Jack and Mike. The two of them was in the car.

1  
2 Q Did there come a time then when you left that  
3 lot?

4 A Yes.

5 Q What did you do when you left the lot?

6 A We left the lot because a man came by; he didn't  
7 stop at the bank. We followed him down the turnpike and  
8 back. He went someplace else. Then he came back to get  
9 the payroll. We followed him down the turnpike, Paul,  
10 Terry, Geoffrey and myself in one car, and Mike and Jack was  
11 in another car. We followed the man down -- I don't know --  
12 to about Linden, New Jersey, I think. Then he had some-  
13 body in the car and he left and came back.

14 We followed him back and when he came back to  
15 the bank he stopped. I stopped my car further up the street  
16 from the bank. Terry and Geoffrey got out and they went  
17 down there, and I pulled down at the lot where I was parked  
18 the first time.

19 Q You say "down there." Tell us where they went.

20 A I parked about a block from the bank and they  
21 went down to the man's car. He got out and went in the bank.

22 Q What man is that?

23 A The man who was to pick up the payroll from the  
24 bank.

25 Q Is that the same car you had been following?



2 A Yes.

3 Q Do you know the name of the bank that this was  
4 near?

5 A No, I don't know the name of the bank.

6 Q Will you continue then to tell us what happened?

7 A When they went down to the car I pulled down the  
8 street about two blocks and waited for them. Then when the  
9 man came out of the bank they grabbed him, put him back in  
10 his car and drove away. They went across the tracks; they  
11 dropped the man in the car and they got out.

12 Geoffrey got in the car with me, and Terry got  
13 in the car with Mike, and we went back to Iodyce's. Then we  
14 left Geoffrey and Paul. Then we went to a motel at George  
15 Washington Bridge and they split up the money.

16 Q Who went to that motel?

17 A Myself, Terry, Mike McCloskey and Jack.

18 Q Would you tell us when you say they grabbed the  
19 man and put him in his car, exactly how they did that?

20 A Well, when he came out of the bank they were  
21 standing across the street by his car, and when he got over  
22 there they grabbed him and put him in the car and they drove  
23 his car off.

24 Q Did they have anything in their hands when they  
25 did this?



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A Yes, they had guns.

Q How many guns?

A Two guns.

Q Who had the guns?

A Terry had one and Geoffrey had one.

Q Do you know where the guns came from?

A They got them from Mike McCloskey at Iodyce's  
that morning when we started.

Q Now, when you went to the motel near the George  
Washington Bridge, what did you do at the motel?

A Well, Mike rented a room, Mike McCloskey, and all  
of us went in the room and the money was in envelopes. We  
tore the envelopes open and they counted all the money.

Q How much money was there, do you know?

A I think something over \$8,000.

Q What did you do after that?

A After that we came down to Iodyce's and picked  
up Geoffrey and Paul, and they went to New York.

Q Do you know the name of the motel near the George  
Washington Bridge or in that area?

A I don't know the name of the motel.

Q Tell us what you did after you picked up Paul,  
and did you say, Terry?

A Picked up Paul and Geoffrey.

Q What did you do after that?

A They went to New York to rent a room in a hotel and I returned to work.

Q Did you do anything else on the 22nd in connection with this case?

A No.

Q What was the next thing that you did related to this matter?

A The next day after I found out where they lived and they called me and they left a message where they lived, I met Paul Crawford and Geoffrey at Maiden Lane and South Street, which was the next day, afternoon. We met Tommy Carroll, Mike McCloskey and Jack and Billy. They was down there waiting.

Q Where was Terry, if you know, that day?

A Terry had returned to Washington to pick up some papers for his car, because he had got it towed away at the hotel.

MR. MARTIN: I move to strike.

THE COURT: Strike it.

Q Did you do anything at Maiden Lane on that day?

A No, sir.

Q Did you have a conversation there?

A Well, we had a conversation. They wanted to

know where the fellows was.

Q Tell us who they are.

A Carroll asked me where was the fellows, and I said Terry had to return to Washington to pick up the papers. And he says, "Well, it is off," and it was off. Geoffrey and Paul Crawford went back to the hotel where they was living and I went back to Long Island.

Q What day of the week was that?

A That was on a Friday.

(Continued on page 230.)

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Q Did you see Geoffrey or Terry again that day?

A No.

Q Did you see them the next day, on Saturday?

A No, I didn't see them, actually see them; but they came to where I was, but I didn't see them.

MR. MARTIN: I am going to object and ask that that be stricken, your Honor.

THE COURT: Strike it.

Q When was the next time that you saw either Terry or Geoffrey?

A Monday, the 26th of March.

Q Now, between Friday, the 23rd and the following Monday, did you speak to either Terry or Geoffrey?

A Yes, I spoke to Terry.

Q And that was on the telephone, was it?

A On the telephone.

Q Now, did you call him or did he call you?

A I called him.

Q Would you tell us where you made the call from?

A From Maria Vasquez' phone.

Q Who is Maria Vasquez?

A A friend of mine, lives in Long Island.

Q Will you tell us where she lives?

A On Springfield Boulevard, I think it's 136-37.



Q Do you know her telephone number?

A 276-6220.

Q Now, how many times did you use that phone, if you remember, over that week end?

A I can't recall the number of times, but I called Terry first and he wasn't home. Then I left word that I would call him back. Then I called him back, when he did get home.

Then I called Tommy Carroll at Mike Wall's.

Q And did you talk to Carroll at Mike Wall's?

A I talked to him.

Q Do you remember what was said in that conversation?

A No, I don't.

Q Do you have a telephone at your home address?

A Yes.

Q Did you have one at this period of time in March of '73?

A Yes.

Q And did you use that telephone in connection with this case?

A No.

Q Directing your attention to Monday night, would you tell us where you saw Terry and Geoffrey?

A Well, Terry called Maria Monday during the day, and he told her if she saw me to tell her --

MR. MARTIN: I object.

MR. DIERENZO: Objection.

THE COURT: All right. Strike it.

Q Would you just tell us where?

A I saw them at Laguardia Airport.

THE COURT: You saw Terry; anybody else?

THE WITNESS: Terry, Geoffrey and Harry.

Q Was Paul with them on that occasion?

A No.

Q Do you know Harry by any other name?

A I know him now as Harry Johnson.

Q Did you go anyplace after you met them at the airport?

A Yes, I took them to -- they wanted a motel where they could have, three could live in one room, so the first motel I took them to, about 11:30, they didn't have any room for three people. So then I took them up the street further to the Mets, which they had a room, Mets Motel, on Queens Boulevard.

Q And after you got to the Mets Motel, did you go anyplace from there?

A No, sir, they stayed there and I went home.

Q Did you do anything on the next day, on Tuesday?

A Yes. The next morning, Tuesday, I picked up Geoffrey, Terry and Harry and went to the motel where they was living in New York, and picked up Terry's car.

Q What motel was that?

A It's a funny name. I can't think of it. But I think it's on 49th Street and Eighth Avenue.

Q And do you know when the car was left there?

A It was left there Saturday, when he left to go back to Washington because they had two cars and he left it there over the week end.

Q After you went to the motel to pick up Terry's car, did you do anything else?

A No, sir, we returned to the Mets Motel and I left them there. I showed them how to get back and I went to work and Harry went with me.

Q Harry went to work with you?

A Yes.

Q While you were at work, did you do anything?

A Yes. Late in the afternoon, I called Wall's Tavern and I got ahold of Jack, and Jack says, "Carroll will be back little shortly. Call back," and I did.

Q Were you still at work when you called back?

A I was still at work.

Q When you called back, did you speak to anyone?

A Yes, I got Carroll later in the afternoon.

Q Would you tell us, if you can recall, what the substance of that conversation was?

THE COURT: Wait a second. Is this on the telephone or when they met personally?

MR. KENNEY: On the telephone.

THE COURT: With whom?

Q Would you tell us who you were talking to on the telephone?

A The last time I called, I got Carroll.

Q And you had spoken to Carroll in person before this, is that right?

A No, I had spoken to Jack on the phone before, and he says Carroll wasn't there, for me to call back.

Q Prior to this occasion, had you ever met with Carroll?

A Yes.

Q And had you ever spoken to him?

A Yes.

Q And you had a great number of times, is that right?

A A great number of times.

Q And you talked to him on the phone before this?



A Yes.

Q When you spoke to him on the afternoon of the 27th, Tuesday afternoon, did you recognize his voice?

A Yes.

Q Would you tell us, if you can remember, what was said in that conversation?

A The only conversation I can remember, I said, "They're back," and he says, "Okay. Meet us down there about 5:30."

Q When you left work on that day, would you tell us where you went?

A I went to South 3rd Street and Havemeyer because that is where Terry and Geoffrey came to meet me, because that is the only place they knew how to find me.

Q And did you go anyplace from there?

A Yes, I went to -- I picked them up, they got in my car; Terry and Geoffrey left their car parked, got in the car with me and Harry, and we drove to Maiden Lane and South Street.

Q When you got to Maiden Lane and South Street, did you see anyone?

A Yes, we met Jack, Mike McCloskey --

DEFENDANT CARROLL: Your Honor, I can't hear

the witness.

THE COURT: Jack, Mike McCloskey.

A -- and Tommy Carroll and Billy McCloskey.

Q And did you do anything on that day?

A No. I got out of the car, went up and talked to them. We didn't do anything.

Q Can you tell us, to the best of your recollection, who you talked to?

A I talked to Tommy Carroll.

Q And what did you say and what did he say?

A The complete conversation I cannot recall.

Q Can you remember anything about that conversation?

A Yes. I said, "They're here."

He said, "Well, let's go to Mike Wall's."

And we left there. I got back in my car and he got in his, and I followed them back to Jersey to Mike Wall's.

Q What time of day was it when you got to Mike Wall's, to the best of your recollection?

A I don't know. It was somewhere around, I'd say, between 7:00 and 7:30 or later.

Q When you reached there, did you go inside?

A Yes.

Q Who else went inside?

A Terry, Geoffrey and Harry and myself went in; Carroll, Mike McCloskey and Jack was already inside. Mike and myself and Carroll and Jack went in the back room. Harry and Geoffrey sat at the bar.

Q Now, when you left Maiden Lane and South Street, did Billy McCloskey go with you?

A He was in the car with Tommy Carroll and Mike and Jack.

Q And when you reached Wall's Tavern, was he at Wall's Tavern?

A No. I didn't see him.

Q All right.

When you went into the small room on the side, did you have a conversation?

A Yes, we had a conversation.

Q There are an awful lot of people that you mentioned. Would you tell us again who was present when that conversation took place, if you can recall?

A Yes. Myself, Tommy Carroll, Mike McCloskey, and Jack and Terry.

Q And can you remember what was said at that time?

A Yes. It was talk about equipment that they needed to do this job, to hold up this postal truck.

MR. DIRENZO: I can't hear him, your Honor.

THE COURT: Would you tell us who said what?

In other words, you have just told us generally what was talked about, but can you tell us which one of the parties said what?

THE WITNESS: Terry said to Carroll what he needed, the list of things that he needed to do the job with.

Q What did he say?

A He said he needed a can of ether.

MR. DIRENZO: What?

THE COURT: Can of ether.

MR. DIRENZO: Can of ether.

A And the guns, which they already had.

DEFENDANT CARROLL: I can't hear.

THE COURT: Keep your voice up.

A A can of ether and the guns and they needed a car.

Q And was anything else said at that time?

A Well, in general, I can't recall the rest of the conversation.

Q Did you do anything else that night, Tuesday night?

A No.



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2 Q Did there come a time when you left Wall's  
3 Tavern?

4 A Yes, we left Wall's Tavern.

5 Q Who left with you?

6 A Geoffrey, Terry, Harry and myself.

7 Q And where did you go?

8 A I took them back to the Mets, back to South  
9 Third Street and Havemeyer. They got their car and they  
10 went back to the Mets Motel.

11 Q Now, what did you do after that night, Tuesday  
12 night; can you tell us the next thing that you did?

13 A Which is the 28th? The next day or that night?

14 Q Did you do anything else that night, first,  
15 Tuesday night?

16 A No, sir. I went home and they went back to the  
17 Mets Motel.

18 Q The next day, on Wednesday, did you do anything?

19 A Yes. The next day I called them at the Mets  
20 Motel and told them what time I'd pick them up because we  
21 had agreed to meet --

22 MF. MARTIN: That is objected to, if your Honor  
23 please.

24 THE COURT: I will overrule it.

25 Q Who did you talk to?

1 A I was talking to Terry, Geoffrey and Harry. I  
2 called them; I agreed that night when I left them I would  
3 call them sometime the next morning, and I called them the  
4 next morning and told them where to meet me at.

5 Q When you called them, do you remember who you  
6 spoke to?

7 A I spoke to Terry, I'm sure.

8 Q After that phone call, what did you do?

9 A Late that afternoon I met them at South Third  
10 Street and Havemeyer.

11 Q When you say "them," are you referring to --

12 A Terry, Geoffrey and Harry.

13 Q And after you met them at South Third Street and  
14 Havemeyer, did you go anyplace?

15 A Yes. We went to Maiden Lane and South Street.

16 Q And did you meet or see anyone at Maiden Lane  
17 and South Street?

18 A Yes. We met Carroll, Mike McCloskey, and Jack  
19 and Billy.

20 Q And did you do anything on that day?

21 A Well, we was going to do it, but we didn't have  
22 a car, but Carroll told me where a station wagon was and he  
23 gave me the key, and he told me to go get it, but I didn't go  
24 get it because I didn't want to drive it around there for  
25

1           them to use it, so I left it there. Then by the time that  
2           they went to check on the mail truck and come back, Billy--

3                   MR. DIRENZO: Objected to.

4                   THE COURT: Sustained.

5           Q       Would you tell us just what you saw yourself and  
6           what you heard and would you tell us who said these things,  
7           if you can recall?

8           A       When we got to Maiden Lane and South Street,  
9           Tommy Carroll said, "We have a car, station wagon."

10                   He says, "Here's the key."

11                   He told me where it was, to go pick it up, he  
12           would be back later.

13                   I went, found the station wagon parked, and I  
14           left it there; I didn't touch it.

15                   I came back and I waited for Carroll and Mike  
16           and Billy and Jack to return.

17           Q       When you say you came back, you came back to  
18           where?

19           A       Came back to Maiden Lane and South Street.

20           Q       And did anyone return?

21           A       Yes. Carroll, Mike and Billy and Jack returned,  
22           and I told them I didn't get the car.

23                   So it was too late anyway, because we had fooled  
24           around and waited too late and we left.



Q Now, did you do anything else that you can recall on the afternoon or night of Wednesday, the 28th?

A No.

Q What was the next thing that you did in connection with this case?

A The next thing was the 29th.

Q What day of the week was that, do you recall?

A That was on Thursday.

Q What did you do on the 29th?

A This was the 28th, right?

MR. MARTIN: I am going to object to any colloquy between the witness and the United States Attorney.

THE COURT: Overruled.

MR. MARTIN: Respectfully excepted.

THE COURT: He asked a question.

MR. MARTIN: I thought I understood the witness to say "Right."

THE COURT: He asked a question.

Q You testified as to what happened on Wednesday of that week. Can you tell us, to the best of your recollection, if anything else happened that week, and if so, what?

A Yes. That was on a Wednesday. We left there, from Maiden Lane and South Street, Geoffrey, Terry, Harry and



2 myself, and we went to New Jersey, to Mike Wall's Tavern.  
3 I met a fellow named Frank, me, Tommy Carroll -- Terry was  
4 in the back room -- and Mike. I got \$400 from Frank to  
5 lend Geoffrey so he could go to Washington because his  
6 license plate had expired on his car and he wouldn't be  
7 able to get back after the 30th. We had to wait there for  
8 him quite a while, but anyway, when he came, he lent us the  
9 money and we came back to New York.

10 Q And when you say, "We came back to New York,"  
11 who came with you?

12 A Geoffrey, Terry, Harry and myself.

13 Q When you came to New York, what did you do?

14 A I left them in the Mets Motel.

15 Q Where did you go?

16 A Then I went home.

17 Q Now, on the next day, on Thursday, did you do  
18 anything?

19 A Thursday, we met them, met Harry -- myself,  
20 Harry and Geoffrey met Tommy Carroll, Mike and Billy.

21 Q And where did you meet them?

22 A At Maiden Lane and South Street.

23 Q What time of day did you meet them?

24 A It was about between 5:00 and 6:00.

25 Q Did you have a conversation that you can recall?

1  
2 A Yes. They didn't have a car. They didn't get  
3 the equipment that they're supposed to have. Carroll said  
4 they couldn't get it and Jack was missing and he said,  
5 "Well, we'll get a car out of a parking lot and we'll use  
6 that."

7 And so I pulled up a couple of blocks, we waited  
8 and waited, and soon Carroll came and says, "Well get a car  
9 out of a parking lot near the post office," and he went and  
10 got a car.

11 Q What post office is that that you are referring  
12 to?

13 A It's called Post Slip.

14 Q And did you see Carroll again that day?

15 A That was on a Thursday.

16 Q Yes, after he told you he would get a car, did  
17 you see him again?

18 A Yes.

19 Q And when did you see him again?

20 A After he brought the car back, he gave the car  
21 to Geoffrey and to Harry. Then by that time the postal truck  
22 had come and gone, but we followed it anyway, we couldn't  
23 catch it, and it went on and they dropped the car and they  
24 left.

25 Q Now, after that car was dropped off, did you do

1 anything else on that night?

2 A No.

3 Q That was Thursday. Did you do anything else that  
4 week that you can recall?

5 A Yes. Friday, Friday night we met, Mike, Billy  
6 McCloskey, Tommy Carroll and Jack, at Katz' on Houston  
7 Street, myself, Geoffrey and Terry and Harry.

8 Q And could you tell us what Katz' is?

9 A Katz' is a restaurant on Houston.

10 Q Would you describe the inside of Katz' for us,  
11 just briefly? What does it look like?

12 A It is a large dining room that you go in and sit  
13 down and order. It's a restaurant, a large one.

14 Q Does it have large counters against the wall?

15 A It has large counters, but they have waiters  
16 that comes over and takes the orders.

17 Q Does it also have self-service --

18 MR. MARTIN: I am going to object to the leading  
19 at this point.

20 THE COURT: Overruled. He is describing a  
21 restaurant.

22 Q Does it also have self-service lines?

23 A It has self-service lines, too.

24 Q When you got to Katz' was there any conversation  
25



that you can recall?

THE COURT: Let's see. Who was at Katz'? Yourself, Terry, Geoffrey, Harry?

THE WITNESS: Harry.

THE COURT: And who else?

THE WITNESS: Mike McCloskey came, Tommy Carroll, Billy McCloskey and Jack, they came. We waited outside for them to come.

THE COURT: All right. Go ahead.

A Then we went inside and we sat down and we had a sandwich, all of us. We ate. And we discussed what we had to do, all eight of us, and Mike says, "I have a van now," because that's what we was missing; they had a van outside.

And Carroll says, "Meet us down just below the Brooklyn Bridge," which is on South Street.

Harry, Geoffrey and Terry got in my car. Mike drove the van down, Mike McCloskey. Billy and Jack and Tommy Carroll went in Mike's car.

We met just below the Brooklyn Bridge on South Street. Geoffrey, Terry, got out of my car, got in the van with Mike. Harry stayed in the car with me.

Billy and Jack and Tommy Carroll was in the car in front of them. Jack got out and got in the van. Tommy



Carroll and Mike McCloskey left -- Billy McCloskey left.

Q You say "left," you mean they drove away?

A They drove away and they says, "We'll be back and let you know when everything is okay."

They drove away. We sit there. I sit in my car with Harry, Mike McCloskey, Terry and Geoffrey and Jack was in the van, right in front of me.

Q Did you see Tommy Carroll or Billy McCloskey again?

A Possible 15 to 20 minutes later they returned.

Q And did they say anything when they returned?

A When they returned they says, "Get in position."

Q I'm sorry. I asked you did they say anything. Would you tell us, if you can remember, who said that?

A When they returned, Carroll says, "Get in position." Mike McCloskey drove away with the van with Terry, Geoffrey and Jack in the van. They drove south of Peck Slip Post Office. They double parked.

MR. KENNEY: Your Honor, if I may, I'd ask the Court's indulgence and ask the witness to come over to Government Exhibit 2 to show us this on the map. I think it might be more understandable.

THE COURT: All right.

Q Now, Mr. Crawford, perhaps you stand to the right

of that map and the jury will be able to see it.

Now, do you recognize that map?

A Yes.

Q Would you show us on the map where South Street is?

A This is South Street. This is the Brooklyn Bridge. We was parked here. I was parked right behind the van.

When Tommy Carroll returned, about 15 or 20 minutes later, Mike McCloskey drove the van with Jack, Terry and Geoffrey in it and double parked right here, beside the post office. Tommy Carroll and Billy McCloskey parked their car here.

I parked over here.

It's a wide street; the cars park in the middle of the block.

The postal truck was in here.

Geoffrey, Terry and Jack got out of the van, they walked to here, which is where there is a stop sign, and there is a small square -- it's like a little park. There was a police car setting here, and they waited out here, and along came the postal truck. When it came out of here, Mike McCloskey pulled out in front of it, and he got here. He was going to stop, and they was going to hijack

the mail truck --

MR. MARTIN: I am going to object to that, if your Honor please, and ask that it be stricken.

THE COURT: Overruled.

MR. MARTIN: He says, "They were going to."

THE COURT: Overruled.

A This is what he was supposed to do when he got here, but this police car here -- and it was raining -- Terry and Geoffrey and Jack changed their mind and left the mail truck go, and they called it off for that night.

THE COURT: Do you want the witness to stay there?

MR. KENNEY: No, your Honor.

You can return to the witness stand, if you would, Mr. Crawford.

Q Now, did you do anything else after it was decided that you would not attempt the crime that day?

A Yes. We came back, just below the parking lot, in that parking lot below the Peck Slip, and Carroll says, "Jack knows where he can get some cigarettes. Anybody want to go with him?"

Q Now, would you just tell us where you went at that point?

A We came back down there and Carroll says, "You



got to take me to 57th Street and Eleventh Avenue."

I took Tommy Carroll, Billy McCloskey to 57th Street and Eleventh Avenue, between Eleventh and Twelfth Avenue. They picked up a station wagon out of a garage, and we drove out Route 80 to where 46 comes to Route 80 and we waited for Mike McCloskey, Geoffrey, Terry and Jack.

Q Now, did those four people arrive?

A Yes. Five people arrived.

Q All right. Now, at the point where you met at Route 80, will you tell us who was there?

A Myself and Billy and Tommy Carroll was there waiting; Mike McCloskey, Jack, Terry, Geoffrey and Harry came.

Q How many cars were there?

A It was three cars, two cars and a station wagon.

Q And did you go anyplace from there?

A We went to someplace in Pennsylvania. I don't know where.

Q And how long did it take you to get there?

A Quite a long time.

Q When you reached there, did you then return to the New York-New Jersey area?

A Yes. We got there and we stayed there for about two, three hours, then we returned to New York.



Q When you started back, how many cars did you have?

A Two cars.

Q Which car was not with you?

A The station wagon.

Q And did you have any conversation with any of the other men who were with you about the station wagon before you started back?

A Yes. I walked over to the car and Carroll says, "We're going to go back, but we're going to leave the station wagon here." And I got in the car and we started back.

Q Now, when you got back to New York what did you do?

A When I got back to New York I took Terry, Geoffrey and Harry to the Mets Motel, about 7:00 o'clock in the morning, 7:00 or 8:00, and I returned home.

Q Now, that would be on Saturday, is that right?

A That's right.

Q And did you do anything else on that day, Saturday?

A About 12:00 o'clock I picked them up, picked up Harry, Geoffrey and Terry, and took them to Howard Johnson, just across the -- outside the Holland Tunnel, and they picked up their car and they returned to Washington.

Q When was the next time that you --

THE COURT: I think we ought to have a short recess for the morning.

(Jury left the courtroom.)

THE COURT: You may step down.

(Witness left the courtroom.)

THE COURT: All right.

(Recess.)

11 2 (In the absence of the jury.)

3 THE COURT: I notice in the request to charge  
4 that Mr. Martin has submitted the following, "The defendant  
5 Vincent McCloskey is entitled to have the question of his  
6 sanity submitted to you, the members of the jury, for your  
7 determination even though he has offered no expert testimony  
8 to support his claim."

9 I don't know what you have in mind, Mr. Martin,  
10 but, certainly, there has to be some proof regarding the  
11 issue of insanity for me to submit it to the jury, because  
12 there is a presumption of sanity.

13 Secondly, if you are going to raise this issue,  
14 I would suggest, Mr. Kenney, that you have an examination  
15 conducted of the defendant. Under the Driscoll case an  
16 examination conducted on the question of competency to  
17 stand trial cannot be used on the issue of competency at the  
18 time of the event.

19 MR. KENNEY: The order in this case provides he  
20 should be examined for sanity and competency at the time of  
21 the event.

22 THE COURT: My offhand recollection of the  
23 reports go only to his competency to stand trial, do they  
24 not?

25 MR. KENNEY: That is correct, but on both orders

1 it is provided he should be examined to determine his  
2 sanity at the time of the event. We have contacted  
3 Doctor Abrahamson. He would be prepared to examine  
4 Mr. McCloskey tomorrow morning at 9:15.  
5

6 MR. MARTIN: The reason I submitted the charge  
7 to the Court, I was not sure what would happen during the  
8 course of the trial and what my defense would turn out to  
9 be. So I gave that in anticipation if the question came  
10 up that your Honor would have it before you. Whether it  
11 will or not, I don't know. If it does not, I will have  
12 that request withdrawn. I submitted it should the question  
13 arise.

14 THE COURT: In order to make sure that trial  
15 is not delayed by a last minute injection of the issue, the  
16 government will be entitled if it feels it necessary to  
17 have an examination conducted of the defendant tomorrow  
18 morning, should you wish, Mr. Kenney.

19 MR. KENNEY: That is correct.

20 MR. MARTIN: I have no objection.

21 THE COURT: Bring the jury in.

22 That is true, the order appointing  
23 Doctor Abrahamson signed September 6, which came about  
24 through the communication from Mr. Goldberg, then attorney  
25 for Mr. Vincent McCloskey, does direct the doctor to



determine it as of the time of the alleged criminal conduct.

MR. DIRENZO: I was going to suggest for the sake of saving time, if Mr. McCloskey had to be examined again that it be subsequent to Chester Crawford's testimony on direct, because we are going to require some time, I believe, we are going to ask the Court to grant us some time to go over his direct testimony in preparation for cross.

THE COURT: The direct will be over before tomorrow morning, I expect.

MR. DIRENZO: I don't know.

THE COURT: I think that is pretty obvious.

(Jury in box.)

BY MR. KENNEY:

Q Now, Mr. Crawford, when we stopped you were referring to the last weekend in March. You had testified that Terry and Geoffrey and Harry had returned to Washington. After they returned to Washington on that weekend, when was the next time that you saw anyone of the three of them?

A April 5th.

Q Now, between March 31 and April 5, 1973, did you speak to Terry or Geoffrey or Harry?

A I spoke to Terry.

Q That was on the telephone? Is that right?

A On the telephone.

Q Would you tell us, did you call him or did he call you?

A I called him. Then he called me back. Then I called him again.

Q Would you tell us where these calls were made by you and received by you?

A They were received by me at Maria Vasquez' telephone.

Q Where did you make the calls to to Terry?

A I made two back to Terry from Maria Vasquez' telephone.

Q Now, during that period of time did you talk to anyone of the other defendants on the telephone?

A I talked to Tommy Carrol 1.

Q Where did you call Tommy Carroll from?

A From Maria Vasquez' telephone.

Q What number did you call him at? Do you recall?

A If I recall, recollect the number, it is 863-8847.

Q Do you know where that number is?

A Wall's Tavern.

Q Now, before you saw Terry and Geoffrey and Harry on April 5, did you speak to them on the day of the fourth?

A By telephone.

Q By telephone?

1 A Yes.

2 Q Where were they at that time?

3 A In Washington.

4 Q Now, where did you see them on the 5th?

5 MR. DIPENZO: May we know whether that is a  
6 telephone call to three separate individuals or one person?

7 Q Will you tell us whom you were talking with?

8 THE COURT: You have already established he  
9 talked to Terry on the telephone over the weekend. Is there  
10 anybody else you want to establish he talked to over the  
11 weekend?

12 Q Whom were you talking to on April 4th on the  
13 telephone?

14 A Terry.

15 Q Now, where did you see Terry and Geoffrey and  
16 Harry for the first time on April 5th?

17 A Across the street from Katz' diner, from Katz'  
18 on Houston Street.

19 Q After you saw them, will you tell us what you  
20 did?

21 THE COURT: Establish the time.

22 Q What time of day is this?

23 A Between 1:00 and 2:00.

24 Q Is that in the morning or in the afternoon?

1 A In the afternoon.

2 Q After you saw them will you tell us what you did?

3 A We drove up to Second Avenue and Houston; there  
4 is a big parking lot. Terry put his car in there, in the  
5 parking lot, and he left it there, and it was about 2:00,  
6 close to 2:30. So he drove around a little while, for about  
7 an hour and then we came back and picked up Terry's car,  
8 then drove to East River Drive, to a project building there.

9 THE COURT: East River Drive and where? The  
10 East River Drive is about 15 miles long.

11 THE WITNESS: East River Drive and Houston Street.  
12 Where Terry parked his car, and he went upstairs in the  
13 apartment -- I don't know just which.

14 Q What did you do?

15 A Then Geoffrey, Harry and me, we returned to Katz'  
16 to wait for Jack, Tommy Carroll, Mike and Billy.

17 Q How did you return to Katz'?

18 A By my car, in my car.

19 Q When you returned to Katz', did you meet anyone  
20 there?

21 A We waited until about 5:00 o'clock, Tommy  
22 Carroll, Mike McCloskey and Billy and Jack came.

23 Q And when they arrived at Katz, did you have a  
24 conversation?  
25



A Yes, we went inside and we had a conversation.

Q Do you have a recollection as to what was said and who said it?

A Carroll said to me, "Do you have everybody with you?" I said, "I have Geoffrey and Harry. Terry is at East River Drive and Houston Street. He shall be along shortly." He says, "Okay, pick him up. Meet me at Brooklyn Bridge and South Street."

Q Was anything else said, if you can recall?

A The rest of the conversation I don't remember, something, but I don't remember.

Q Did there come a time when you left Katz' Delicatessen?

A Yes, I left Katz' Delicatessen. Myself, Geoffrey and Harry left.

Q Where did you go?

A We went to East River Drive and Houston Street, where the car was parked.

Q Did you do anything when you got there?

A We got there. We didn't know what apartment Terry had went to. So we waited, and he never came. They took a suitcase out of the back of his car.

Q Who is "they"?

A Geoffrey and Harry.

Q What happened after that?

A They put it in the car, and we went back on our way, back to Katz'. We got back. Tommy and Mike and Jack and Billy was gone. Then we started back down Houston Street towards the East River Drive to where Terry's car was parked. When we got there the car pulled away and we caught him and we circled the block, and he parked the car.

We picked up Terry and drove to South Street, below the Brooklyn Bridge, where they was waiting.

MR. KENNEY: I ask the witness to go to the chart and show us what happened from that point on.

THE COURT: All right.

Q Now, Mr. Crawford, will you show us where you were when you went to South Street?

A We went to South Street. I pulled behind the van here, me, Terry, Geoffrey and Harry. Billy, Jack and Carroll was in the car. Terry and Geoffrey got in the van, and Jack, Carroll and Billy left. They returned shortly, told Mike it was time. So Mike pulled up here (indicating) and double parked at the side of the post office. Terry and Geoffrey and Jack got out of the car. They walked to this square here, but they were not gone long. They returned. They returned back to the panel truck sitting here where Mike was. Jack got in the panel. Geoffrey and Terry came

1 down here where I was parked and Carroll was parked. Terry  
2 stopped to talk to Carroll. Geoffrey came down to the car  
3 and got in the car and he says, "That police car is still  
4 there," and he didn't like it.  
5

6 Then shortly -- I don't know what Terry told  
7 Carroll -- he came down and he said, "Take me to another  
8 place. I'm going to look someplace else."  
9

10 Then we got in the car and we drove up here  
(indicating) and around here (indicating).

11 Q Who was in the car at that time?

12 A Geoffrey, Terry and Harry and myself. We drove  
13 up to here (indicating) and I let them out. And they went  
14 this way, and I drove all the way around back to here where  
15 they was waiting, where Carroll was waiting here, and Mike  
16 and Jack was in the panel.

17 When I came along here someplace I heard shots,  
18 and Harry says, "What was that?" I said, "I don't know."  
19 So we came back to here. Carroll was gone; Billy was gone;  
20 and the panel was gone. Then we went all the way back to  
21 here (indicating) and we saw the postal truck and a lot of  
22 people. Harry got out and walked up there to see what was  
23 going on. And he says, "Meet me back in the parking lot."

24 I came back and parked. Harry never returned.

25 Q Did you see anyone else after you returned to the

Peck Slip parking lot?

A Yes. After Harry never returned I drove to Houston Street. I saw Mike McCloskey.

MR. KENNEY: Your Honor, may Mr. Crawford return to the witness stand?

THE COURT: Yes.

Q Now, would you tell us where you saw Mike McCloskey when you returned to Houston Street?

A It was about Avenue B and Houston Street I saw Mike walking down the street.

Q Did you meet with him at that time?

A He came over to the car.

THE COURT: Wait a second. You returned to Houston?

THE WITNESS: Houston and Avenue A, somewhere in the vicinity.

THE COURT: Just by chance did you see him?

THE WITNESS: Just by chance, yes.

THE COURT: You saw Mike?

THE WITNESS: Mike McCloskey.

Q When he came over to the car did he say anything to you?

A Yes, he says, "The fellows went towards the East River." He says, "See if you can catch them." I went down



there and I never saw them. And I circled the block and I never did see them.

Q Who was he referring to?

A He was referring to Geoffrey and Terry.

MR. MARTIN: I'm going to object to that.

MR. KENNEY: He is entitled to tell us.

THE COURT: He can tell us who it was intended to mean, what he thought. This is normal conversation between two people.

MR. MARTIN: I think he is asking him for what another person was thinking.

THE COURT: No, he says, "The fellows went down there," and he is telling you what he thought was meant by "the fellows."

MR. MARTIN: The thing is, he is telling us what he thought.

THE COURT: I don't know how else you can find it out.

MR. MARTIN: It is completely erroneous.

THE COURT: Overruled.

MR. DIRENZO: Just note my objection to your Honor's comment with reference to the fellows.

THE COURT: That is the testimony from the witness stand under oath.

Q Mr. Crawford, did you go anyplace at that point after you saw Mike McCloskey?

A I drove towards the East River Drive and Houston Street. I never saw them. I circled around. I never saw them. Then I went home.

Q Did there come a time that evening when you left your home?

A Yes.

Q Prior to that did you speak to anyone on the telephone?

A Yes.

Q Whom did you speak to on the telephone?

A I called Iodyce's and I got ahold of Jack and he told me that everybody was over there. He told me that Terry, Geoffrey and Harry was there and to come over there, that Carroll wanted me to come over there. But I had learned they had called me several times at Maria Vasquez'.

Q When you left your home where did you go?

A I met them at Iodyce's in New Jersey.

Q You say "them." Whom did you meet?

A I met Harry, Geoffrey, Terry, Mike McCloskey, Tommy Carroll and Jack.

Q Now, would you tell us what Iodyce's is?

A Iodyce's is a bar in Jersey.

Q And where is that bar in relation to Wall's Tavern?

A About, I would say, five or six blocks.

Q Now, when you went to Iodyce's on the <sup>5</sup>th of April, did you have a conversation with anyone?

A Yes, I talked to Mike McCloskey, Tommy Carroll and Jack.

Q Would you tell us if you can remember what was said by each person? Let's start with Mike McCloskey?

MR. DIRENZO: This is all objected to, if your Honor please.

THE COURT: Objection overruled.

A When I got to the bar I asked them what happened.

Q You asked who what happened?

MR. DIRENZO: May I give the grounds of the objection?

THE COURT: I think I know, but if you wish, you may.

(At the bench.)

MR. DIRENZO: Your Honor indicated that you knew the basis of my objection. I think your Honor does know. My objection is that at this moment in point of time if a crime was committed and there was a conspiracy, at this point it terminated, and if it terminated at this point I

would say none of this testimony would now be admissible against any of the defendants.

THE COURT: Mr. Kenney?

MR. KENNEY: Our position is, your Honor, that we can elicit testimony for a limited time thereafter even though the crime had been committed, for the period of time immediately following the crime in which the participants are disarranging themselves and deciding how to handle their affairs with relation to the conspiracy.

THE COURT: I will let it in on that basis. I think there is another basis. This witness has testified so far and as the indictment reads, I can't tell whether the conspiracy is over or not. They may come back the next day and try it again.

MR. DIRENZO: I think the District Attorney will represent to you at this time that the crime was completed.

THE COURT: They could have continued the conspiracy.

MR. DIRENZO: The same one?

THE COURT: Surely, the conspiracy to rob the truck. It may not be this day; it may be the next day. According to this man's testimony, they had been there several times to effect it. They didn't effect it this time; they may go back the next day. I think certainly as far as

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the events of this evening I will allow that in.

MR. DIRENZO: The United States Attorney knows at this time that there was no such arrangement, and I think it is reasonable for us all to assume that from all of the facts in this case.

THE COURT: Not from what I have heard so far from the witness stand.

MR. DIRENZO: Unless he knows differently.

THE COURT: He has given perfectly good grounds. I was adding other grounds.

MR. KENNEY: There is another matter we can clear up very quickly. We intend to elicit from the witness telephone calls subsequent to this night, stretching into several weeks later, but not any conversations, just the fact that calls were made and the witness spoke to certain people.

THE COURT: For what purpose?

MR. KENNEY: For the purpose of identity of the various defendants at the time. We have the telephone records.

THE COURT: The time what?

MR. KENNEY: We intend to put telephone records in evidence.

THE COURT: After this date?

MR. KENNEY: After this date.

THE COURT: For what purpose?

MR. KENNEY: For the purpose of identity.

THE COURT: I'm afraid I'm not quite clear on this.

MR. KENNEY: There are a series of telephone calls made from Washington to Queens County to New Jersey and back. Those calls go from Queens County to Washington and then back to Wall's Tavern, and after the crime is committed, the calls go from Wall's Tavern to Queens County and to Washington. We submit that is evidence as to who uses the phone at Wall's Tavern.

THE COURT: I would not let it in.

MR. KENNEY: Would your Honor let us put in the calls directly after that period of time? Two days later?

THE COURT: Two days later? No.

(In open court.)

Q Now, Mr. Crawford, you have testified that you were in Iodyce's Tavern on the evening of April 5th, 1973, that you had a conversation or conversations there. Could you tell us who was present at the conversation and to the best of your recollection what was said and who said it?

A When I arrived I met Jack, Mike McCloskey, and Tommy Carroll. Terry, Geoffrey and Harry was in the back

room someplace. So I asked Carroll what happened. He says he didn't know. So they started giving their version of what went wrong. They didn't know.

Anyway, the rest of the conversation I don't remember.

Q You told us everything you can recall about the conversation that night?

A Well, I asked them what went wrong and everybody had their own version of what went wrong. But nobody seemed to know between Jack and Mike and Carroll what went wrong. Then we didn't discuss it no more. Then Carroll says, "Well, we will have to stay in tonight and they will return to Washington tomorrow."

So I took Harry to the Gateway Motel, and he rented a room for three.

Q Before you took Harry to the Gateway Motel, did Carroll do anything?

A Yes, he gave money to Harry to rent the room.

Q Did he do anything else?

A He cashed a check.

Q Did you see him cash the check?

A I saw the check in his hand. I guess he gave it to the bartender.

THE COURT: Who cashed what check?

MR. KENNEY: I asked the witness if Carroll did anything else before he gave the money to the witness in Howard Johnson.

THE COURT: He didn't say that.

MR. KENNEY: May I put that question?

THE COURT: Yes.

Q Prior to the time that Carroll gave the money to yourself and to Harry Johnson for the motel, did Mr. Carroll do anything?

A Mr. Carroll had a check in his hand, and he gave it to the bartender, I reckon. But he gave me the money and I left with Harry and I went to the Gateway Motel and Harry rented a room for three.

Q When you left the Gateway Motel did you go any place?

A I returned to Iodyce's, and Harry gave Carroll the room number, because Carroll is supposed to call him the next day.

Q Did you do anything else or have any other conversations at Iodyce's that night?

A I left and went home. No.

Q Now, Mr. Crawford, is it a fact that you have been told by the government that you will not be prosecuted for the robbery of the man outside the Plaza National Bank



In Jersey?

A. Yes.

MR. KENNEY: Thank you. I have no further questions.

THE COURT: You wish some time, I assume?

MR. DIRENZO: That is correct, your Honor.

THE COURT: I suppose the best thing to do then is to adjourn now for lunch and come back at 2:00 o'clock. I have told defense counsel that they would be able to confer prior to the cross-examination of the witness, and by the time they get through conferring we would be ready for lunch, anyhow. So I will excuse you until 2:00 o'clock.

(Jury and witness excused.)

MR. DIRENZO: With your Honor's permission and without trying to impose unnecessarily on the United States Marshals, I think it would be helpful if at all possible for the defendants to remain with counsel in the courtroom so we can confer. We can have sandwiches here.

THE COURT: You will have to work that out with the marshals.

MR. DIRENZO: It is a little bit cumbersome to go downstairs with the prisoners.

THE COURT: The department of security is the problem of the marshals. I can't direct them to do anything

1 which is unwise. You will have two hours in which to  
2 accomplish this. That is quite a length of time.

3 MR. KENNEY: The marshals have told me that  
4 they will bring the defendants over early in the morning  
5 and take them back at 5:00 o'clock or later in the afternoon.

6 THE COURT: We are not worried about that now;  
7 we are talking about my commitment to counsel that they  
8 can confer with their clients before they begin the cross-  
9 examination.

10 MR. KENNEY: We would like to reargue our  
11 motion to put in telephone calls with Myers and Carroll and  
12 Chester Crawford after the crime had been completed for the  
13 purpose of showing that these men had something to do with  
14 this crime. We would argue very strongly that it is very  
15 relevant to this case. I didn't want to make the argument  
16 at the side bar because --

17 THE COURT: I'm not persuaded now. If you can  
18 give me something you think I ought to read, do so.

19 MR. KENNEY: I will do that.

20 (Luncheon recess taken.)  
21  
22  
23  
24  
25

U.S. COURT OF APPEALS:SECOND CIRCUIT

Index No.

U.S.A.,

Appellee,

against

Affidavit of Personal Service

CARROLL, et al,

Defendants-Appellants.

STATE OF NEW YORK, COUNTY OF NEW YORK

ss.:

I, James Steele, being duly sworn,  
deposes and says that deponent is not a party to the action, is over 18 years of age and resides at

250 West 146th Street, New York, New York  
That on the 10th day of June 1974 at Foley Square, New York

deponent served the annexed

*Appellants Brief*

upon

Paul J. Curran-U.S. Attorney Southern District-Attorney for Appellee

the in this action by delivering <sup>his</sup> true copy thereof to said individual  
personally. Deponent knew the person so served to be the person mentioned and described in said  
papers as the Attorney(s) herein,

Sworn to before me, this 10th  
day of June 1974

*James Steele*

Print name beneath signature

JAMES STEELE

*Robert T. Brin*

ROBERT T. BRIN  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 31 - 0418950  
QUALIFIED IN NEW YORK COUNTY  
COMMISSION EXPIRES MARCH 30, 1975

